

United States  
Circuit Court of Appeals

For the Ninth Circuit.

Vol. 2152

LYON COUNTY BANK MORTGAGE CORPORATION, a corporation,  
Appellant,

vs.

W. J. TOBIN, as Receiver of The Reno National Bank, of Reno, Nevada, a National Banking Association,  
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the District of Nevada.

FILED

DEC 2 - 1938

PAUL P. O'BRIEN



United States  
Circuit Court of Appeals

For the Ninth Circuit.

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CORPORATION, a corporation,  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF  
ATTORNEYS OF RECORD

GEORGE L. SANFORD, Esq.,  
Carson City, Nevada, and

A. L. HAIGHT, Esq.,  
Fallon, Nevada.

For the Appellant.

N. J. BARRY, Esq.,  
Reno, Nevada,

For the Appellee. [1\*]

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In the District Court of the United States,  
in and for the District of Nevada

No. 2721

LYON COUNTY BANK MORTGAGE  
CORPORATION, a corporation,

Complainant,

vs.

W. J. TOBIN, as Receiver of The Reno National  
Bank, of Reno, Nevada, a National Banking  
Association,

Defendant.

COMPLAINT

Complainant complains of defendant and alleges:

I.

That complainant is now, and at all times since  
the 1st day of November, 1933, has been, a corpora-

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\*Page numbering appearing at the foot of page of original certified  
Transcript of Record.

tion formed for the sole and only purpose of liquidating the assets of the hereinafter-named Lyon County Bank and organized and existing under and by virtue of the laws of the State of Nevada; [2]

## II.

That The Reno National Bank is, and at all times herein mentioned was, a national banking association organized and existing under and by virtue of the laws of the United States of America, and up to about the 1st day of November, 1932, was doing a general banking business in the city of Reno, state of Nevada;

## III.

That Lyon County Bank is now, and at all times herein mentioned was, a corporation organized and existing under and by virtue of the laws of the State of Nevada, and up to about the 16th day of February, 1932, was doing a general banking business in the City of Yerington, state of Nevada:

## IV.

That on or about the 1st day of July, 1931, said Lyon County Bank, for a valuable consideration, executed and delivered to said The Reno National Bank its certain promissory note, in words and figures as follows, to wit:

\$60,500.00                      Reno, Nevada, July 1, 1931

On demand after date, without grace, for value received, Lyon County Bank a corporation, promises to pay to The Reno National Bank or order at

its Banking Office in Reno, Nevada, the sum of Sixty thousand five hundred 00/100ths Dollars in lawful money of the United States, with interest thereon at the rate of eight per cent per annum from date until paid. Interest payable on demand, also after judgment.

The endorsers, sureties, gurantors and assignors, severally waive [3] presentation for payment, protest and notice of protest for non-payment of this note, and all defenses on the ground of any extension of time of its payment that may be given by the holder or holders, to them or either of them, or to the maker thereof. In the event of the non-payment of this said note at maturity, or its collection by suit, this corporation agrees to pay all expenses that may be incurred thereby, including a reasonable attorney's fee, and to that end binds itself, its successors and assigns forever. For the purpose of attachment or levy of execution, this note shall be payable wherever this corporation, or any of its property may be situated, at the option of the holder.

In witness whereof, the said corporation has caused this instrument to be executed and its corporate seal to be hereunto affixed by its proper officers first thereunto duly authorized.

[Seal]

LYON COUNTY BANK

By J. I. WILSON

President

By GEO. F. WILLIS

Secretary

No. 5166

## V.

That said Lyon County Bank did, under date of July 22, 1931, execute and deliver three certain collateral security agreements to said The Reno National Bank, copies of which are attached hereto as a part of "Exhibit X" and by this reference are made a part of this complaint; and that simultaneously with the delivery thereof to said The Reno National Bank, and for the purposes set out in said agreements, the said Lyon County Bank assigned, delivered and deposited with the latter the following- [4] described property, to wit:

6/\$1000.00 First Lien Coupon Certificates of the Mortgage Security Corporation of America, Series B-10, of January 1, 1941 maturity—Nos. 9505 to 9510 Inclusive.

22/\$1000.00 Walker River Irrigation Dist., First Issue Series 1, 6% Bonds, of January 1st, 1940 maturity, Nos. 845 to 850 Inc., 894, 896, 898, 900, 902, 904, 906, 920, 922, 924, 926, 928, 930, 932, 934, and 936.

Note of Loraine L. & J. Wedertz for \$5000.00 dated May 15, 1931.

Note of Elmer S. & Cora H. Wedertz for \$7300.00 dated Feb. 27, 1931.

Note of H. E. & Roena W. Carter for \$5500.00 dated May 1, 1931.

Note of Montelatici, et als for \$8000.00 dated June 20, 1930.

Note of David Jones, et als for \$16500.00 dated February 27, 1930.

Note of Yparraguirre, P. M. & Bertha for \$24800.00 dated June 15, 1931.

together with certain mortgages given to secure the payment of the above-described promissory notes;

#### VI.

That on February 16, 1932, the actual value of the assets of said Lyon County Bank was insufficient to pay its liabilities and it was unable to meet the demands of its creditors in the usual and customary manner and was insolvent; that on [5] the last-mentioned date the state Bank examiner of the State of Nevada took possession of the property and business of such bank under and pursuant to the banking laws of the State of Nevada and retained such possession until the 29th day of March, 1934, when the same was delivered to the complainant as hereinafter stated; and that said The Reno National Bank knew of such taking possession by the state bank examiner at all times on and after February 16, 1932;

#### VII.

That, after taking possession of the property and business of said Lyon County Bank as aforesaid, the said state bank examiner gave notice in the manner and for the time required by law, calling on all persons having claims against said bank to present the same to the said state bank examiner

and make legal proof thereof, at the office of said Lyon County Bank, in Yerington, Nevada, on or before September 2, 1932; and that, pursuant to such notice, said The Reno National Bank filed with said state bank examiner its claim against the Lyon County Bank, a copy of which is attached hereto marked "Exhibit X" and by this reference made a part hereof;

### VIII.

That complainant is informed and believes, and upon such information and belief alleges, that on or about the 9th day of December, 1932, the Comptroller of the Currency of the United States, acting under and pursuant to the laws of the United States, investigated and examined the condition of said The Reno National Bank and after such investigation and examination said Comptroller of the Currency became satisfied and found that said [6] The Reno National Bank was insolvent, and thereupon duly appointed W. J. Tobin receiver of said The Reno National Bank and its property; and that on or about the 9th day of December, 1932, said W. J. Tobin duly qualified as such receiver and ever since has been, and now is, the duly appointed, qualified and acting receiver of said The Reno National Bank and as such has possession of all the property, business and assets of said The Reno National Bank;

### IX.

That, pursuant to a judgment made and entered on the 26th day of October, 1933, in the First Judi-

cial District Court of the State of Nevada, in and for Lyon County, in an action pending therein designated as No. 2727, in conformity with the statutes of the State of Nevada in such case made and provided, the state bank examiner (then superintendent of banks) of the State of Nevada and the said Lyon County Bank conveyed, assigned and set over to the complainant corporation all of the property, real and personal, all stocks, bonds and notes, actions and causes of actions, books and records, and all assets of every kind and character of said Lyon County Bank, on the 29th day of March, 1934; and that at all times since said last-named date the complainant corporation has been, and still is, the owner and entitled to the possession thereof;

#### X.

That complainant is informed and believes, and upon such information and belief alleges, that on February 16, 1932, the amount owing upon the said promissory note of July 1, 1931, by said Lyon County Bank to said The Reno National Bank, including interest to that date, was the sum of Sixty-one Thousand One [7] Hundred Five Dollars (\$61,105.); and that the said Lyon County Bank was not otherwise indebted to said The Reno National Bank;

#### XI.

That payments aggregating Sixty-five Thousand Eight Hundred Forty-one and 90/100 Dollars (\$65,841.90) have been received by the defendant and

said The Reno National Bank since February 16, 1932, on account of the indebtedness upon which the claim filed as aforesaid was founded; that said claim and indebtedness has been fully paid; that said defendant and said The Reno National Bank have received payment of the sum of Forty-seven Hundred Thirty-six and 90/100 Dollars (\$4,736.90) in excess of the amount to which they were entitled, to wit, the sum of Sixty-one Thousand One Hundred Five Dollars (\$61,105.), being the amount owing on February 16, 1932, when the state bank examiner took possession of the property and business of the Lyon County Bank as aforesaid; and that said sum of Forty-seven Hundred Thirty-six and 90/100 Dollars (\$4,736.90) is in the possession of the defendant;

## XII.

That the defendant still has in his possession, of the assets of the Lyon County Bank pledged to said The Reno National Bank on July 22, 1931, as hereinabove stated, the following to wit:

Promissory notes of H. E. and Roena W. Carter, upon which there remains an unpaid balance of Eight Hundred Seventy-three and 05/100 Dollars (\$873.05), together with interest since October 21, 1936;

Promissory notes of Elmer S. and Cora H. Wedertz, upon which [8] there remains an unpaid balance of Thirty-four Hundred Seventy-one and



05/100 Dollars (\$3,471.05), together with interest since October 21, 1936;

Together with certain mortgages given to secure the payment of the above-described promissory notes;

XIII.

That the complainant has, prior to the institution of this action, demanded of the defendant that he re-assign and return to the complainant the promissory notes and mortgages mentioned in paragraph XII hereof, and that he refund and pay over to the complainant the said sum of Forty-seven Hundred Thirty-six and 90/100 Dollars (\$4,736.90); but that the defendant has at all times wholly failed and refused so to do;

XIV.

That the assets of the said Lyon County Bank are wholly insufficient to make payment in full of the claims of depositors and creditors of said bank; that to this date but one dividend, amounting to approximately 22.5%, has been paid on account of the claims of creditors and depositors, and the remaining assets are not sufficient in value to pay more than 22.5% additional, or 45% in all, to the said claimants.

Wherefore, complainant prays judgment against the defendant:

(1) For the sum of Forty-seven Hundred Thirty-six and 90/100 Dollars (\$4,736.90) and for the re-assignment and return to the complainant of

the promissory notes and mortgages mentioned and referred to in paragraph XII of this complaint; [9]

(2) For its costs herein incurred; and

(3) For such other and further relief as to the court may seem meet in the premises.

GEORGE L. SANFORD

A. L. HAIGHT

Attorneys for Complainant

State of Nevada,  
County of Lyon—ss.

H. C. Guild, being first duly sworn, deposes and says that he is the president of the corporation complainant named in the foregoing complaint; that he has read the said complaint and knows the contents thereof; and that the same is true of his own knowledge except as to those matters therein alleged on information and belief and, as to those, that he believes it to be true.

H. C. GUILD

Subscribed and sworn to before me this 30 day of March, A. D., 1937.

[Seal]

LOUIS W. FRANKLE

Notary Public [10]

## EXHIBIT X

In the Matter of the

## LYON COUNTY BANK

## CLAIM OF THE RENO NATIONAL BANK

The undersigned, The Reno National Bank, a corporation organized and existing under and by virtue of the laws of the United States of America, and doing a general banking business at its principal place of business at Reno, Washoe County, Nevada, presents this its claim against the Lyon County Bank to E. J. Seaborn, Bank Examiner of the State of Nevada, together with the necessary vouchers for approval.

That the Lyon County Bank is now indebted to The Reno National Bank in the sum of Fifty-eight Thousand, One Hundred Fifty and  $\frac{34}{100}$  Dollars (\$58,150.34), being the balance on a certain promissory note hereinafter described, together with interest thereon at the rate of eight percent (8%) per annum, for money loaned and advanced by the said The Reno National Bank, which said indebtedness is evidenced by a certain promissory note dated July 1, 1931, payable on demand, a full, true and correct copy of which note, together with all the endorsements thereon, is attached hereto, marked Exhibit "A", and expressly made a part hereof.

That the aforesaid claim is secured by three collateral agreements executed by and between The Reno National Bank and the Lyon County Bank

on July 1, 1931, full, true and correct copies of which are attached hereto, expressly made a part hereof, and marked Exhibits "B", "C" and "D", respectively; [11] that on the 1st day of October, 1931, The Reno National Bank discounted a certain promissory note hereinafter described, paying full value therefor to the Lyon County Bank; that the Lyon County Bank endorsed and guaranteed the payment of said note, that there is now due on said note to The Reno National Bank the principal sum of Five Thousand Dollars (\$5,000.00), with interest thereon from June 30, 1932, until paid, at the rate of eight percent (8%) per annum, payable semi-annually, a full, true and correct copy of said promissory note being attached hereto, marked Exhibit "E" and expressly made a part hereof.

That this claim is presented for the aggregate sum of Sixty-three Thousand, One Hundred Fifty and  $\frac{34}{100}$  Dollars (\$63,150.34), Fifty-eight Thousand, One Hundred Fifty and  $\frac{34}{100}$  Dollars (\$58,150.34) thereof representing the balance due on the principal sum of the promissory note in favor of The Reno National Bank hereinbefore mentioned, together with interest on the principal sum of said promissory note, to-wit: Sixty Thousand, Five Hundred Dollars (\$60,500.00) at the rate of eight percent (8%) per annum from the 1st day of July, 1931, to the date hereof, and interest hereafter to accrue on said promissory note in accordance with the terms thereof, less the credit to interest heretofore paid as set forth and endorsed on said prom-

issory note, a full, true and correct copy of which is attached hereto, marked Exhibit "A", as aforesaid; and interest on Five Thousand Dollars (\$5,000.00) thereof from the 30th day of June, 1932, to the date hereof, and interest hereafter to accrue in accordance with the terms of said promissory note, a full, true and correct copy of which is attached hereto, marked Exhibit "E" and expressly made a part hereof.

[Seal]            THE RENO NATIONAL BANK  
                    By P. L. NELSON  
                                    Its Cashier

THATCHER & WOODBURN  
Attorneys for Claimant [12]

State of Nevada,  
County of Washoe—ss.

P. L. Nelson, being first duly sworn, according to law, upon oath deposes and says: That he is the cashier of The Reno National Bank, a corporation organized and existing under and by virtue of the laws of the United States of America, and makes this affidavit on its behalf; that this affidavit is made by affiant on behalf of said claimant because claimant itself cannot take an oath; that affiant is an officer of said claimant corporation and is authorized to make this proof on its behalf, and it is necessary that this claim thus presented be verified by someone on behalf of The Reno National Bank.

That the amount of the claim of The Reno National Bank in the sum of Sixty-Three Thousand,

One Hundred Fifty and  $34/100$  Dollars (\$63,150.34), together with interest on the principal sum of Sixty Thousand, Five Hundred Dollars (\$60,500.) at the rate of eight per cent (8%) per annum from the 1st day of July, 1931, to the date hereof, less the credit to interest heretofore paid as set forth and endorsed on said promissory note, a full, true and correct copy of which is attached to this claim, marked Exhibit "A", as hereinbefore stated, is justly due, and that the interest which will hereafter accrue in accordance with the terms of said promissory note is justly made and will be due on demand; that interest on the principal sum of Five Thousand Dollars (\$5,000.00) on the note signed by F. W. Simpson and endorsed by the Lyon County Bank is due from the 30th day of June, 1932, and that the interest which will hereafter accrue in accordance with the terms of said note will be due on demand, that no payments have been made thereon which [13] are not credited, and that there are no offsets to same to the knowledge of the affiant.

P. L. NELSON

Subscribed and sworn to before me this 1st day of September, 1932.

[Seal] JOHN DONOVAN

Notary Public in and for the County of Washoe,  
State of Nevada. [14]

## EXHIBIT "A"

\$60,500.00

Reno, Nevada, July 1, 1931

On Demand after date, without grace, for value received, Lyon County Bank a corporation, promises to pay to The Reno National Bank or order at its Banking Office in Reno, Nevada, the sum of Sixty thousand five hundred 00/100ths Dollars in lawful money of the United States, with interest thereon at the rate of eight per cent per annum from date until paid. Interest payable on demand, also after judgment.

The endorsers, sureties, guarantors and assignors, severally waive presentation for payment, protest and notice of protest for non-payment of this note, and all defenses on the ground of any extension of time of its payment that may be given by the holder or holders, to them or either of them, or to the maker thereof. In the event of the non-payment of this said note at maturity, or its collection by suit, this corporation agrees to pay all expenses that may be incurred thereby, including a reasonable attorney's fee, and to that end binds itself, its successors and assigns forever. For the purpose of attachment or levy of execution, this note shall be payable wherever this corporation, or any of its property may be situated, at the option of the holder.

In Witness Whereof, the said Corporation has caused this *instrument* to be executed and its cor-

porate seal to be hereunto affixed by its proper officers first thereunto duly authorized.

[Seal]

LYON COUNTY BANK

By J. I. WILSON

President.

By GEO. F. WILLIS

Secretary.

No. 5166 [15]

That the following endorsements appear upon the back of the said note:

	<u>Endorsement on Principal</u>			<u>Balance due on Principal</u>
Feb	23	1932	\$1000.00	\$59,500.
Mar	3	1932	\$ 956.36	\$58,543.64
Mar	8	1932	\$ 180.00	\$58,363.64
May	3	1932	\$ 106.65	\$58,256.99
Jun	1	1932	\$ 106.65	\$58,150.34

	<u>Endorsement on Interest</u>			
Dec	16	1931	\$2420.	to Dec 31 1931
Jun	30	1932	\$ 180.	on acct
Jun	30	1932	\$ 660.	“ “
Jul	2	1932	\$ 660.	“ “
Jul	8	1932	\$ 106.65	“ “
Aug	8	1932	\$ 106.65	“ “
Aug	13	1932	\$ 110.00	“ “

[16]

EXHIBIT "B"

The Reno National Bank

Reno, Nevada, July 22, 1931.

As collateral security for the payment of all of Our present indebtedness to The Reno National Bank, of Reno, and all of the future indebtedness



to said Bank, which we may incur hereafter from any cause or upon any consideration we have assigned, and do hereby assign, deliver and deposit with said Bank the following described property, to-wit:

6/\$1000.00 First Lien Coupon Certificates of the Mortgage Security Corporation of America, Series B-10, of January 1, 1941 maturity—Nos. 9505 to 9510 Inclusive.

of the value of ..... Dollars. and hereby give authority to said Bank, or its assigns to call for such additional security as it, or its assigns, may deem proper, which security we agree to give on demand, and on default being made in giving such security or in paying said indebtedness, then all of our indebtedness to said Bank shall be considered due and immediately payable, whether otherwise due or payable or not, at the option of said Bank, or its assigns, and the said Bank is hereby given authority to sell and deliver the whole or any part of said property, at either public or private sale, at any time or place, either with or without demand for payment, either with or without notice of such sale, and either with or without advertisement of such sale, as said Bank, its officers or agents may elect; such demand, notice and advertisement are hereby waived. At such sale said Bank or any other person or persons may become the purchaser of the whole or any part of said property. After deducting all costs and [17] expenses incurred in connection with such sale, including

reasonable attorney's fee, and the amount of said indebtedness, out of the proceeds of such sale, the surplus, if any, shall be paid to us or our heirs, or assigns, and we agree to pay any deficiency there may be, if any, in the payment of said indebtedness and costs and expenses of such sale, after the proceeds of sale have been applied as aforesaid.

LYON COUNTY BANK

[Seal]

By J. I. WILSON,

Pres.

By GEO. F. WILLIS

Cashier. [18]

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EXHIBIT "C"

The Reno National Bank

Reno, Nevada, July 22, 1931.

As collateral security for the payment of all of our present indebtedness to The Reno National Bank, of Reno, and all of the future indebtedness to said Bank, which we may incur hereafter from any cause or upon any consideration we have assigned, and do hereby assign, deliver and deposit with said Bank the following described property, to-wit:

22/\$1000.00 Walker River Irrigation Distr.,  
 First Issue Series 1, 6% Bonds, of January 1st,  
 1940 maturity, Nos. 845 to 850 Incl., 894, 896,  
 898, 900, 902, 904, 906, 920, 922, 924, 926, 928,  
 930, 932, 934, and 936

of the value of ..... Dollars. and hereby give authority to said Bank, or its assigns, to call for

such additional security as it, or its assigns, may deem proper, which security we agree to give on demand, and on default being made in giving such security or in paying said indebtedness, then all of our indebtedness to said Bank shall be considered due and immediately payable, whether otherwise due or payable or not, at the option of said Bank, or its assigns, and the said Bank is hereby given authority to sell and deliver the whole or any part of said property, at either public or private sale, at any time or place, either with or without demand for payment, either with or without notice of such sale, and either with or without advertisement of such sale, as said Bank, its officers or agents may elect; such demand, notice and advertisement are hereby waived. At such sale said Bank or any other person or persons may become the purchaser [19] of the whole or any part of said property. After deducting all costs and expenses incurred in connection with such sale, including reasonable attorney's fee, and the amount of said indebtedness, out of the proceeds of such sale, the surplus, if any, shall be paid to us or our heirs, or assigns, and we agree to pay any deficiency there may be, if any, in the payment of said indebtedness and costs and expenses of such sale, after the proceeds of sale have been applied as aforesaid.

LYON COUNTY BANK

[Seal]

By: J. I. WILSON,

Pres.

By: GEO. F. WILLIS,

Cashier. [20]

## EXHIBIT "D"

The Reno National Bank

Yerington, Nevada, July 22, 1931.

As collateral security for the payment of all of our present indebtedness to The Reno National Bank, of Reno, and all of the future indebtedness to said Bank, which we may incur hereafter from any cause or upon any consideration we have assigned, and do hereby assign, deliver and deposit with said Bank the following described property, to-wit:

- Note of Loraine L. & J. Wedertz for \$5000.00 dated May 15, 1931
- “ Elmer S. & Cora H. Wedertz for \$7300.00 dated Feb. 27, 1931
- “ H. E. & Roena W. Carter for \$5500.00 dated May 1, 1931
- “ Montelatici, et als for \$8000.00 dated June 20, 1930
- “ David Jones, et als for \$16500.00 dated February 27, 1930
- “ Yparraguirre, P. M. & Bertha for \$24800.00 dated June 15, 1931

of the value of ..... Dollars. and hereby give authority to said Bank, or its assigns, to call for such additional security as it, or its assigns, may deem proper, which security we agree to give on demand, and on default being made in giving such security or in paying said indebtedness, then all

of our indebtedness to said Bank shall be considered due and immediately payable, whether otherwise due or payable or not, at the option of said Bank, or its assigns, and the said Bank is hereby given authority to sell and deliver the whole or any part of said property, at either public or private sale, at any time or place, either with or without demand for payment, either with or without notice of such sale, and either with or without advertisement of such sale, as [21] said Bank, its officers or agents may elect; such demand, notice and advertisement are hereby waived. At such sale said Bank or any other person or persons may become the purchaser of the whole or any part of said property. After deducting all costs and expenses incurred in connection with such sale, including reasonable attorney's fee, and the amount of said indebtedness, out of the proceeds of such sale, the surplus, if any, shall be paid to us or our heirs, or assigns, and we agree to pay any deficiency there may be, if any, in the payment of said indebtedness and costs and expenses of such sale, after the proceeds of sale have been applied as aforesaid.

LYON COUNTY BANK

[Seal]

By: J. I. WILSON,

Pres.

By: GEO. F. WILLIS,

Cashier. [22]

## EXHIBIT "E"

\$5000.00      Yerington, Nevada, September 22, 1931.

On demand after date without grace, for value received I promise to pay to Lyon County Bank or order in Yerington Nevada, the sum of Five Thousand Dollars in U. S. gold coin with interest thereon at the rate of eight per cent per annum from date until paid. Interest payable semi-annually also after judgment.

The endorsers, sureties, guarantors and assignors, severally waive presentation for payment, protest and notice of protest, for non payment of this note and all defenses on the ground of any extension of time of its payment that may be given by the holder or holders, to them or either of them, or to the maker or makers thereof. In the event of the non payment of this said note at maturity, or its collection by litigation, we jointly and severally agree to pay all expenses that may be incurred thereby including attorney's fee, and to that end bind ourselves, heirs, executors, administrators and assigns forever. For the purpose of attachment or levy of execution, this note shall be payable wherever we may be situated at the option of the holder.

F. W. SIMPSON

No. 6875

5370

Name—F. W. Simpson.

Payments:

Date—June 30, '32.

Interest—\$308.88 to June 30, '32.

Principal—

Balance—

No. 6875—Date 9/22/31

Amount \$5000.00

When due Interest 8%

Endorsers or collateral

Bond, \$8000.00 and Mortgage on Smith Valley Improvement Club Hall for \$2000.00.

Endorsed: Pay Reno National Bank or order for Re-Discount and Credit of Lyon County Bank Geo. F Willis Cashier.

[Endorsed]: Filed April 2, 1937. [23]

---

[Title of District Court and Cause.]

ANSWER

Now comes the defendant above named and answering plaintiff's complaint on file herein, admits, alleges and denies as follows:

I.

Answering Paragraph XI of said complaint, defendant admits that payments aggregating the sum of \$65,841.90 have been received on account of the indebtedness upon which the claim heretofore filed with the plaintiff was founded, but denies that said claim and indebtedness has been fully paid, and denies that defendant has received the sum of \$4,736.90, or any sum, in excess of the amount to which he was entitled.

As a further defense to plaintiff's cause of action and by [24] way of counterclaim, defendant alleges:

### I.

That among the assets of The Reno National Bank when defendant took possession thereof as Receiver, there was a note of the Lyon County Bank upon which there was then due as principal the sum of \$59,543.64.

### II.

That to secure the payment of said note, said Lyon County Bank had hypothecated to The Reno National Bank certain securities consisting of bonds, and notes secured by mortgage, as security for the payment of said principal obligation.

### III.

That defendant, on the 21st day of October, 1936, had collected as interest on said collateral securities accruing after his appointment as Receiver of The Reno National Bank on or about the 12th day of December, 1932, the sum of \$14,658.84.

### IV.

That after applying said sum of \$14,658.84 to the payment of the interest due on said primary obligation of the Lyon County Bank up to said 21st day of October, 1936 and the balance remaining after the application of the interest on said primary obligation, as aforesaid, said balance, together with the payments made on the principal of



said primary obligation and the sum of \$956.36, which consisted of a deposit balance to the credit of Lyon County Bank in The Reno National Bank, reduced said indebtedness on said 21st day of October, 1936 to the sum of \$9,316.94.

## V.

That no part of said sum of \$9,316.94 has ever been paid by the plaintiff to defendant, and the whole amount thereof, together with interest thereon from the 21st day of October, 1936 at the [25] rate of 8% per annum is now due, owing, unpaid and payable from the said plaintiff to the defendant.

Wherefore, defendant prays that plaintiff take nothing by its action and that he have his costs herein expended.

N. J. BARRY

Attorney for Defendant. [26]

State of Nevada,  
County of Washoe.—ss.

W. J. Tobin, being first duly sworn, deposes and says:

That he, as Receiver of The Reno National Bank, is the defendant in the above entitled action; that he has read the foregoing Answer and knows the contents thereof; and that the same is true of his own knowledge, except as to those matters which

are therein stated on information and belief, and as to those matters, he believes it to be true.

W. J. TOBIN

Subscribed and sworn to before me this 9th day of September, 1937.

[Notarial Seal] MARY THOMPSON  
Notary Public in and for the County of Washoe,  
State of Nevada.

[Endorsed]: Filed Sept. 10, 1937. [27]

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[Title of District Court and Cause.]

REPLY

Comes now the complainant and for reply to the answer of defendant and respecting the further defense and purported counterclaim and new matter in the same, denies, admits and alleges as follows, to-wit:

I.

Denies the allegation and matters in paragraph I, to-wit:

“That among the assets of The Reno National Bank [28] when defendant took possession thereof as Receiver, there was a note of the Lyon County Bank upon which there was then due as principal the sum of \$59,543.64.”

Makes the same denial if the said sum be intended to be stated as Fifty-Eight Thousand Five Hundred Forty-Three and 64/100 Dollars (\$58,543.64).

In this connection and in furtherance of its denials complainant alleges that on February 16, 1932, the total amount due and owing on the said note, including both principal and interest, was Sixty-One Thousand One Hundred Five Dollars (\$61,105.), of which Sixty Thousand Five Hundred Dollars (\$60,500) was principal and Six Hundred Five Dollars (\$605.) was interest. That on the said day by operation of law a credit entry on the part of Reno National Bank in the sum of Nine Hundred Fifty-Six and  $36/100$  Dollars (\$956.36) was offset against said total amount of Sixty-One Thousand One Hundred Five Dollars (\$61,105.) so that the total balance at the close of said day was not more than Sixty Thousand One Hundred Forty-Eight and  $64/100$  Dollars (\$60,148.64) and was for principal only. That at the close of said day by operation of law the claim of Reno National Bank against Lyon County Bank was converted into a claim by Reno National Bank against the insolvent estate of Lyon County Bank in the sum of Sixty Thousand One Hundred Forty-Eight and  $64/100$  Dollars (\$60,148.64). That the said insolvent estate was in such situation and its assets actual and potential were such that no general claim of or debt to any creditor could be paid in full in the principal sum owing at the date of insolvency and that after making payment out of all assets and funds pro rata on account of the claims of creditors there was and would be no funds or assets out of which to pay any interest accruing or promised on any such

claim and no such interest could be [29] paid from such insolvent estate, without making a preference forbidden by law; and no general claim could or can be paid except in equal proportion with other claims.

That on and after February 16, 1932, the Reno National Bank had a general claim against the said insolvent estate in the sum of Sixty Thousand One Hundred Forty-Eight and 64/100 Dollars (\$60,148.64) and no more. That on December 12, 1932, the time referred to in said paragraph I, the amount of the claim of Reno National Bank against said insolvent estate, for any reason, by reason of principal and accrued interest to February 16, 1932, or at all, was not in excess of Sixty Thousand One Hundred Forty-Eight and 64/100 Dollars (\$60,148.64), less the amount of the avails of the said collateral originally deposited by the debtor bank with the creditor bank credited or properly to be credited against said claim. That the said amounts so credited or to be credited properly in the period between February 16, 1932, and December 12, 1932 were not and could not be allocated to any interest on the said note and obligation or claim which accrued or is claimed to have accrued after February 16, 1932.

Notwithstanding the premises complainant alleges that Reno National Bank collected to October 21, 1936, as Reno National Bank admits, in paragraph I of the main answer, the total sum of Sixty-Five Thousand Eight Hundred Forty-One and 90/100 Dollars (\$65,841.90), including the said off-

set of Nine Hundred Fifty-Six and 36/100 Dollars (\$956.36), and continues to retain the said Carter notes and Wedertz notes described and as alleged in paragraph XII of the complaint (which matter defendant does not deny).

In this connection complainant alleges that the claim referred to in paragraph VII of the complaint (and to which reference is made in the main answer paragraph I, viz.: "the claim [30] heretofore filed with plaintiff," and the following words in said paragraph I: "Defendant admits that payments aggregating the sum of \$65,841.90 have been received on account of the indebtedness upon which the claim heretofore filed with the plaintiff was founded, \* \* \* ") was not a true, correct or just claim and that the alleged indebtedness is not and was not the "foundation" of such claim and said claim was not founded on the indebtedness alleged by defendant.

## II.

Complainant denies the matters in paragraph II.

## III.

Complainant denies the allegations and matters in paragraph III, to-wit:

"That defendant, on the 21st day of October, 1936, had collected as interest on said collateral securities accruing after his appointment as Receiver of The Reno National Bank on or about the 12th day of December, 1932, the sum of \$14,658.84."

And in this connection and in furtherance of its denials complainant alleges that the defendant was appointed receiver on December 12, 1932; that after the date of the said note, July 1, 1931, the Reno National Bank collected various sums as avails from the collaterals deposited with it and continued to collect the same up to and through the period of insolvency of Lyon County Bank and up to December 12, 1932, when the defendant receiver was appointed, and that from December 12, 1932, the defendant receiver collected various sums as avails from said collaterals up to the 21st day of October, 1936. Complainant is without information as [31] to how much of said collections were made as of interest on collaterals by the receiver in the period between the date of his appointment, to-wit, December 12, 1932, and the said 21st day of October, 1936, and makes denial accordingly.

In this connection complainant alleges that before the commencement of this suit, defendant stated the account herein, in writing, to complainant in the words and figures set out in "Exhibit A" annexed hereto.

In this connection complainant is informed and believes and alleges as follows:

1. That in the period from February 16, 1932, to October 21, 1936, there was collected from Collaterals and including the deposit of Nine Hundred Fifty-Six and 36/100 Dollars (\$956.36) the total sum of Sixty-Five Thousand Eight Hudred Forty-One and 90/100 Dollars (\$65,841.90), and of this

the sum stated to be collected as interest was Fifty-One Hundred Eighty-Two and  $92/100$  Dollars (\$5,182.92) in its source as shown by "Exhibit A" in original sub-collateral endorsement.

In this connection complainant alleges the sub-collateral endorsement "8-13-32 Simpson Interest \$110.00" carried and extended out to a primary endorsement of interest on the primary obligation, was not applicable for such endorsement or credit and should have been returned to the payer or applied as a credit against the principal of said primary obligation. Complainant alleges further in this connection that the interest avails that accrued after the date of said insolvency and actually collected by The Reno National Bank and W. J. Tobin, Receiver, did not exceed Twenty-Nine Hundred Thirty and  $75/100$  Dollars (\$2,930.75).

2. That the said defendant later revised the endorsement of and account of collections so as to show totals collected [32] of Sixty-Five Thousand Six Hundred Sixty-One and  $90/100$  Dollars (\$65,661.90) and of this sum collected as interest was stated to be Twenty-Three Thousand One Hundred Eighteen and  $97/100$  Dollars (\$23,118.97).

3. That the said defendant endorsed on the primary obligation account credits as follows: On principal (including \$956.36) the sum of Sixty Thousand Four Hundred Ninety-Nine Dollars (\$60,499.); on interest the sum of Fifty-Three Hundred Forty-Two and  $90/100$  Dollars (\$5,342.90), leaving a balance on principal of One Dollar (\$1.), and account-

ing for a total of Sixty-Five Thousand Eight Hundred Forty-Two and 90/100 Dollars (\$65,842.90) as the claimed primary obligation.

4. That thereafter the said defendant made a revised primary endorsement after the 21st day of October, 1936, and purported to endorse credits on the primary obligation as follows: On principal, Fifty-One Thousand One Hundred Eighty-Three and 06/100 Dollars (\$51,183.06); on interest Fourteen Thousand Six Hundred Fifty-Eight and 84/100 Dollars (\$14,658.84); stated balance on principal Ninety-One Hundred Thirty-Six and 94/100 Dollars (\$9,136.94) and accounting for a total of Seventy-Five Thousand One Hundred Fifty-Eight and 84/100 Dollars (\$75,158.84) as the claimed primary obligation. None of said revisions or re-applications were or are consented to by this complainant.

Complainant alleges that the account of collections amounting to Sixty-Five Thousand Eight Hundred Forty-One and 90/100 Dollars (\$65,841.90) is correct and admitted. That by reason of the stoppage of interest by insolvency the primary obligation and valid claim never exceeded Sixty-One Thousand One Hundred Five Dollars (\$61,105.). That defendant is indebted to complainant in the sum or difference of Forty-Seven Hundred Thirty-Six and 90/100 Dollars (\$4,736.90). Complainant alleges that the said receiver, [33] W. J. Tobin, without right, retained interest on collaterals accrued after insolvency of Lyon County Bank, amounting to Twenty-Nine Hundred Thirty and



75/100 Dollars (\$2,930.75), but even in such case he should have applied only Sixty-One Thousand One Hundred Five Dollars (\$61,105.) to the claim against the insolvent bank estate and should have refunded Eighteen Hundred Six and 15/100 Dollars (\$1,806.15) to the debtor, besides surrendering the remaining collaterals. That there is no balance due on the primary obligation, or by reason of any valid claim either in the sum of Ninety-One Hundred Thirty-Six and 94/100 Dollars (\$9,136.94) or in any other sum.

#### IV.

Complainant denies all the allegations and all the matters in paragraph IV.

In this connection complainant denies that the sum of Fourteen Thousand Six Hundred Fifty-Eight and 84/100 Dollars (\$14,658.84) or any other sum other or more than the sum of Fifty-Three Hundred Forty-Two and 90/100 Dollars (\$5,342.90) was ever applied by defendant to the payment of interest on said primary obligation. Denies that the sum of Fourteen Thousand Six Hundred Fifty-Eight and 84/100 Dollars (\$14,658.84) was applied to the payment of interest due on said primary obligation. Denies that any such application coupled with the credit on principal of Nine Hundred Fifty-Six and 36/100 Dollars (\$956.36) or any other actual applications on account of principal reduced the indebtedness on said primary obligation on the 21st day of October, 1936, or at any time, only to

the sum of Ninety-Three Hundred Sixteen and 94/100 Dollars (\$9,316.94).

In this connection complainant alleges that the sum of [34] Fifty-Three Hundred Forty-Two and 90/100 Dollars (\$5,342.90) and no more was applied on interest on the alleged primary obligation; that Sixty Thousand Four Hundred Ninety-Nine Dollars (\$60,499.), including said Nine Hundred Fifty-Six and 36/100 Dollars (\$956.36), was so applied on the principal of said alleged primary obligation, leaving a balance of One Dollar (\$1.) thereon and no more. That the alleged primary obligation was stated at Sixty-Five Thousand Eight Hundred Forty-Two and 90/100 Dollars (\$65,842.90). That the total collections were Sixty-Five Thousand Eight Hundred Forty-One and 90/100 Dollars (\$65,841.90). That the actual primary obligation, including all interest due or allowable, was Sixty-One Thousand One Hundred Five Dollars (\$61,105.).

## V.

Complainant admits that no part of said Ninety-One Hundred Thirty-Six and 94/100 Dollars (\$9,136.94) has ever been paid by complainant to defendant, as for a balance due on said primary obligation. Complainant denies that there is any such balance due. Complainant alleges that the primary obligation has been paid and Forty-Seven Hundred Thirty-Six and 90/100 Dollars (\$4,736.90) besides, not voluntarily but by the appropriation thereof without right on the part of defendant from the

collections and avails from the collaterals so posted with defendant and his predecessor bank. Complainant denies that any interest is due defendant on the alleged balance of Ninety-One Hundred Thirty-Six and 94/100 Dollars (\$9,136.94) or on any sum either from October 21, 1936, or from any date or at all.

And for a Defense to Said Purported Defense, Counterclaim and New Matter, Complainant Says:  
[35]

I.

That at or about the time defendant stated the amount to the effect that there were collections aggregating Sixty-Five Thousand Eight Hundred Forty-One and 90/100 Dollars (\$65,841.90) from the said Nine Hundred Fifty-Six and 36/100 Dollars (\$956.36) credit and from the said collaterals and that Sixty Thousand Four Hundred Ninety-Nine Dollars (\$60,499.) had been applied on principal and Fifty-Three Hundred Forty-Two and 90/100 Dollars (\$5,342.90) applied on interest on the alleged primary obligation, the complainant altered its situation in consideration thereof and paid a dividend amounting to twenty-five per cent. (25%) on its stock (which said stock was in pro rata to the available assets compared to the outstanding deposit and other obligations of said insolvent bank) and arranged its affairs so as to make a further dividend of approximately the same amount, and the complainant denied to its stockholders and to creditors of said insolvent bank any and all interest on their claims from and after the date of

said insolvency, so that the defendant is now estopped to recompute or re-allocate or re-apply any of the collections or avails from the collaterals administered by it, in any other manner so as to change the said original primary endorsement of collections upon the original primary obligation herein mentioned. And complainant alleges that in like manner the defendant is estopped from cancelling, erasing, or changing the original endorsements made on collaterals or the allocation of credits on collaterals in the manner as appears from the change of the original sub-collateral endorsements compared to the revised sub-collateral endorsements. And in this connection complainant makes reference to and annexes hereto as complainant's exhibit in defense to said counterclaim the exhibit marked "Com- [36] plainant's Exhibit A on defense to counterclaim annexed hereto."

Complainant alleges further that included in said item of Fifty-Three Hundred Forty-Two and 90/100 Dollars (\$5,342.90) was the sum of Thirteen Hundred Fifty-Six and 84/100 Dollars (\$1,356.84) paid to the defendant and applied as interest on October 21, 1936, after funds were in the hands of the defendant available and sufficient to satisfy said primary obligation in full on the basis of the application originally made by the Reno National Bank and the defendant of the respective payments said to be received thereon. Reference to said statement of application is "Exhibit A" annexed hereto.

Wherefore complainant having answered the counterclaim (as a defendant on counterclaim) and having pleaded to and defended against the new matters appearing in the answer of the defendant, asks that defendant take nothing by reason of his said counterclaim, but that the complainant may have the judgment and relief originally sued for and such other and further relief as may be meet and just at law, in equity and good conscience and may have its costs in this action so wrongfully caused.

And the complainant as in duty bound will ever pray.

GUY C. SANFORD

A. L. HAIGHT

Attorneys for Complainant.

State of Nevada,  
County of Churchill—ss.

E. W. Blair, being first duly sworn, deposes and says that he is the manager of the corpora- [37] tion complainant named in the foregoing reply; that he has read the said reply and knows the contents thereof; and that the same is true of his own knowledge except as to those matters therein alleged on information and belief and, as to those, that he believes it to be true.

E. W. BLAIR

Subscribed and sworn to before me this 16 day of December, A. D., 1937.

[Seal]

BETTY MILLS

Notary Public. [38]



## EXHIBIT "A"

Asset No. 552—LYON COUNTY BANK

## DETAIL OF ORIGINAL AND REVISED ENDORSEMENTS

Date	Source of Funds	Amount	Original-Sub-Collateral Endorsement		Revised Sub-Collateral Endorsement		Original Primary Endorsement		Revised Primary Endorsement	
			Principal Payment	Balance	Principal Payment	Balance	Principal Payment	Balance	Principal Payment	Balance
2-16-32	Deposit Bal Reno Nat Bk	\$ 956.36	\$	\$	\$	\$	\$ 956.36	\$59,543.64	\$ 956.36	\$59,543.64
2-23-32	Philatro & Jones	1,000.00	1,000.00	14,500.00	1,000.00	14,500.00	1,000.00	58,543.64	1,000.00	58,543.64
3- 8-32	Mtg Sec. Corp Bond Coups	180.00					180.00	58,363.64	180.00	58,363.64
5- 3-32	Montelatici Interest	106.65					106.65	58,256.99	106.65	58,256.99
6- 1-32	“ “	106.65					106.65	58,150.34	106.65	58,150.34
2- 6-33	Mtg Sec Corp Bond Coups	180.00					180.00	57,970.34		
2-23-33	H. E. Carter	3,765.56	3,765.56	3,522.44	3,765.56	3,522.44	3,765.56	54,204.78	3,765.56	54,384.78
2-23-33	E. S. Wedertz	4,919.00	4,919.00	4,175.00	4,919.00	4,175.00	4,919.00	49,285.78	4,919.00	49,465.78
2-27-33	L. L. Wedertz	4,080.25	4,080.25	2,707.75	4,080.25	2,707.75	4,080.25	45,205.53	4,080.25	45,385.53
5-10-33	Montelatici	20.00		7,980.00			20.00	45,185.53		
7- 8-33	Philatro & Jones	4,481.79	4,481.79	10,018.21	1,550.56	12,949.44	4,481.79	40,703.74	1,947.11	43,438.42
4-20-34	Montelatici	150.00	150.00	7,830.00			150.00	40,553.74		
4-26-34	Philatro & Jones	50.00	50.00	9,968.21			50.00	40,503.74		
11-30-34	Mtg Sec Corp Bonds	1,499.23	1,499.23	4,500.77	989.23	5,010.77	1,499.23	39,004.51	989.23	42,449.19
12-24-34	Montelatici	5,000.00	5,000.00	2,830.00	3,403.61	4,596.39	5,000.00	34,004.51	3,403.61	39,045.58
2-19-35	Philatro & Jones	4,135.78	4,135.78	5,832.43	2,334.82	10,614.62	4,135.78	29,868.73	2,334.82	36,710.76
2-25-35	“ “	2.45	2.45	5,829.98			2.45	29,866.28		
4-19-35	“ “	3,643.31	3,643.31	2,186.67	3,490.92	7,123.70	3,643.31	26,222.97	3,490.92	33,219.84
5-31-35	Yparraguirre	3,936.09	3,936.09	15,493.91			3,936.09	22,286.88	1,841.01	31,378.83
6-10-35	Walker River Bonds	14,306.16	14,306.16	7,693.84	10,419.50	11,580.50	14,306.16	7,980.72	14,236.42	17,142.41
7- 2-35	Philatro & Jones	456.74	456.74	1,729.93	324.97	6,798.73	456.74	7,523.98	372.94	16,769.47
10-24-35	H. E. Carter	2,000.00	2,000.00	1,522.44	1,247.06	2,275.38	2,000.00	5,523.98	1,582.70	15,186.77
1- 4-36	L. L. Wedertz	3,329.75	2,707.75	00	2,707.75	00	3,329.75	2,194.23	3,090.16	12,096.61
1-16-36	Philatro & Jones	100.00	100.00	1,629.93			100.00	2,094.23		
10-21-36	E. S. Wedertz	1,928.07	1,928.07	2,246.93	703.95	3,471.05	1,928.07	166.16	1,256.67	10,839.94
10-21-36	H. E. Carter	1,523.00	1,520.44	2.00	649.39	1,625.99	165.16	1.00	1,523.00	9,316.94
	Totals	\$61,856.84	\$59,702.62		\$41,586.57		\$60,499.00		\$51,183.06	





	Amount	Interest		Interest		Interest		Interest	
		Payment	Paid to	Payment	Paid to	Payment	Paid to	Payment	Paid to
3- 8-32			180.00	1- 1-32	180.00	1- 1-32			
5- 3-32			106.65	8-20-31	106.65	8-20-31			
6- 1-32			106.65	10-20-31	106.65	10-20-31			
6-30-32	180.00	180.00		7- 1-32	180.00	7- 1-32	180.00	on account	180.00
6-30-32	660.00	660.00		1- 1-32	660.00	1- 1-32	660.00	on account	660.00
7- 2-32	660.00	660.00		7- 1-32	660.00	7- 1-32	660.00	" "	660.00
7- 8-32	106.65	106.65		12-20-31	106.65	12-30-31	106.65	" "	106.65
8- 8-32	106.65	106.65		2-20-32	106.65	2-20-32	106.65	" "	106.65
8-13-32	110.00	110.00		12-31-31	110.00	12-31-31	110.00	" "	110.00
9- 8-32	106.65	106.65		4-20-32	106.65	4-20-32	106.65	" "	106.65
10-14-32	106.65	106.65		6-20-32	106.65	6-20-32	106.65	" "	106.65
2- 6-33		180.00		1- 1-33	180.00	1- 1-33			180.00
2-23-33	574.44	574.44		2-23-33	574.44	2-23-33	574.44	" "	574.44
2-23-33	866.25	866.25		2-23-33	866.25	2-23-33	866.25	" "	866.25
2-27-33	507.77	507.77		2-27-33	507.00	2-27-33	507.77	" "	507.77
5-10-33					20.00	on Acct.			20.00
7- 8-33					2,931.23	7- 8-33			2,534.68
4-20-34					150.00	on acct.			150.00
4-26-34					50.00	" "			50.00
11-30-34					510.00	11-30-34			510.00
12-24-34					1,596.39	12-24-34			1,596.39
2-19-35					1,800.96	2-19-35			1,800.96
2-25-35					2.45	on acct.			2.45
4-19-35					152.39	4-19-35			152.39
5-31-35					3,936.09	on acct.			2,095.08
6-10-35					3,886.66	6-10-35			69.74
7- 2-35					131.77	7- 2-35			83.80
10-24-35					752.94	10-24-35			417.30
1- 4-36		622.00	1- 4-36		622.00	1- 4-36			239.59
1-16-36					100.00	on acct.			100.00
10-21-36					1,224.12	10-21-36			671.40
"					873.61	"	1,357.84	on account	
Totals	\$ 3,985.06	\$ 5,182.92			\$23,118.97		\$ 5,342.90		\$14,658.84

[Endorsed]: Filed Dec. 31st, 1937. [39]



[Title of District Court and Cause.]

MINUTES OF COURT OF THURSDAY,  
JUNE 16, 1938

This case having heretofore been tried on the merits, briefed, submitted to and by the Court taken under advisement, It Is Ordered that judgment enter for the defendant. The Court now files opinion and decision. [40]

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In the District Court of the United States of America, in and for the District of Nevada.

No. 2721.

LYON COUNTY BANK MORTGAGE CORPORATION, a corporation,

Complainant,

vs.

W. J. TOBIN, as Receiver of The Reno National Bank, of Reno, Nevada, a National Banking Association,

Defendant.

OPINION AND DECISION.

Norcross, District Judge:

The Lyon County Bank, in pursuance of the laws of the State of Nevada relating to banks, on February 16, 1932, was taken over by the State Bank Examiner as an insolvent bank. On December 12, 1932, the Reno National Bank was adjudged to be insol-

vent by the Comptroller of the Currency and W. J. Tobin was appointed and qualified as Receiver thereof. In pursuance of judgment and decree of the State District Court entered October 26, 1933, in accord with the State banking laws, the State Banking Examiner transferred all property of the said Lyon County Bank to Lyon County Bank Mortgage Corporation, Complainant herein.

On July 1, 1931, said Lyon County Bank negotiated a loan from said Reno National Bank in the sum of \$60,500.00 and executed a formal note therefor payable "on demand \* \* \* with interest thereon at the rate of eight per cent per annum from [41] date until paid. Interest payable on demand, also after judgment". The Lyon County Bank also delivered to the Reno National Bank, pledged as collateral security, certain bonds and notes of a total face value in excess of the amount of the loan. At the time the Lyon County Bank was taken over by the State Bank Examiner, it had a deposit account with the Reno National in the sum of \$956.36, which was later credited upon the note. Defendant's answer alleges that at the time the Reno National Bank was taken over by the receiver there was due as principal on said note the sum of \$59,543.64. By its answer, Defendant admits the collection of \$14,658.84, in the form of interest paid on pledged securities, and the application of such amount to the discharge of claimed accrued interest on the note of the Lyon County Bank. Complainant claims a balance due on principal of said note in the sum

of \$9,316.94, together with interest thereon from October 21, 1936. Complainant alleges the total amount due upon principal and interest at the date the Lyon County Bank was taken over by the State Bank Examiner was \$60,148.64; total payments received by Defendant in the sum of \$65,841.90, and, hence, Defendant is indebted to Complainant in the sum of \$4,736.90. Complainant prays judgment in this amount and for return of certain pledged securities and for general relief.

Questions of law presented upon the facts of this case are whether the amount of indebtedness of the Lyon County Bank to the Reno National Bank is finally determined as of the date of insolvency of the Lyon County Bank and its taking over by the State Bank Examiner and thereafter no interest would accrue thereon, which is the contention of Complainant, or whether where such indebtedness is secured by interest bearing pledges, interest derived therefrom may be applied in discharge of interest which does accrue thereon, which is the contention of Defendant. [42]

Upon the trial it appeared from exhibits introduced that Defendant had credited payments received upon collateral whether as principal or interest mainly upon the principal of the note and as so indorsed thereon the balance on the principal of the note as of October 21, 1936, was but one (\$1.00) dollar and a balance due on interest as of that date in the sum of \$7,698.52. Following receipt of a letter of date December 16, 1936, from the Execu-

tive Assistant Counsel of the Comptroller of the Currency, advising Defendant that—"Under the rule stated in the case of *Gamble v. Wimberly*, 44 F. (2d) 329, you are entitled to retain the pledged assets and apply toward interest due on your claim after suspension of the Lyon County Bank all income earned upon and collected from the pledged assets after the date of closing of the Lyon County Bank."—the Defendant made a revision of said previous indorsements resulting in a balance due on principal as of October 21, 1936, of \$9,316.94.

The securities pledged by the Lyon County Bank consisted of six \$1,000.00, First Lien Coupon Certificates of the Mortgage Security Corporation of America, of January 1, 1941 maturity; Twenty-two \$1,000.00, Walker River Irrigation District First Issue, Series 1, 6% Bonds, maturity January 1, 1940; Six promissory notes, secured by mortgages, executed during the years 1930 and 1931, in the total principal amounts of \$67,100.00.

It is Complainant's contention that the Lyon County Bank was not liable for interest upon its said note to the Reno National Bank after the date of its insolvency. Complainant relies on the provisions of sections 35 and 53 of the State Bank Act approved March 22, 1911, Nevada Compiled Laws 1929, Vol. I, section 650 et seq. Section 35 as amended March 2, 1931 reads:

"No bank official shall give preference to any depositor or creditor by pledging the assets of the bank as collateral security or otherwise;

*provided*, [43] *however*,\* that any bank may secure funds deposited with such bank by the United States, state, or counties of the state by pledging acceptable assets of the bank as collateral security; *provided further*, that any bank may borrow money for temporary purposes, not to exceed the amount of its paid-up capital, and may pledge any of its assets as collateral security therefor; *provided further*, that when it shall appear that a bank is borrowing habitually for the purpose of conducting its business, the bank examiner may require such bank to pay off such borrowed money. Nothing herein shall prevent any bank from rediscounting in good faith and indorsing any of its negotiable notes.”

By section 53 it is provided:

“Whenever it shall appear \* \* \* from any examination or report provided for in this act the examiner shall have reason to conclude that such bank is in an unsafe or unsound condition to transact the business of a bank, or that it is unsafe and inexpedient for such bank to continue in business, the examiner may forthwith take possession of the property and business of such bank and retain such possession until such bank shall resume business or its affairs be finally liquidated as herein provided. No

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\*Italics in this Opinion and Decision are by the Court.

bank, corporation, firm or individual knowing of such taking possession by the examiner, shall have a lien or charge for any payment, advance or clearance thereafter made, or liability thereafter incurred against any of the assets of the bank of whose property and business the examiner shall have taken possession as aforesaid  
\* \* \* .”

It is clear from the reading of section 35 that the Lyon County Bank was authorized to negotiate the loan in question and to “pledge any of its assets as collateral security therefor”. There is nothing in the provisions of section 53, *supra*, that would affect pledged assets given to secure the payment of a note issued in pursuance of the provisions of said section 35. It has been contended that interest accruing upon the note after the insolvency of the Lyon County Bank was a liability “thereafter incurred within the meaning of said section 53”. This contention is without merit as will hereafter appear.

The State Banking Act of March 24, 1909 made the following provision:

“Sec. 48. The claims of depositors, for deposits, and claims of holders of exchange shall have priority over all other claims, [44] except federal, state, county and municipal taxes, and subject to such taxes, which at the time of closing of the bank be a first lien on all the assets of the banking corporation from which they are due and thus under receivership; upon



proof thereof, they shall be paid immediately out of the available cash in the hands of the receiver. \* \* \*." See *Washington-Alaska Bank v. Dexter Horton Nat. Bank*, 263 F. 304, 310.

The case last cited involved the question whether the Washington-Alaska Bank was subject to the banking laws of the State of Nevada, said bank having been organized under the laws of the State of Nevada. The Circuit Court of Appeals of this Circuit held that the banking laws of Nevada were not applicable as the bank was doing business in the Territory of Alaska. So holding, the Court decided the question here presented in favor of the Dexter Horton National Bank as follows:

"A pledge which secures an interest-bearing debt secures the interest as much as the principal of the debt." (Citing authorities p. 306).

Commenting on the case last cited the Circuit Court of Appeals for this Ninth Circuit in *Douglas v. Thurston County*, 86 F. (2d) 899, 910, said:

"In support of his contention in favor of the allowance of interest after the bank's insolvency, the treasurer relies upon a single decision—that of *Washington-Alaska Bank v. Dexter Horton Nat. Bank* (C. C. A. 9) 263 F. 304, 306, 307. That case is easily distinguishable from the one at bar. There the national bank was the *plaintiff*, seeking to foreclose a lien on collateral given by a *state* bank. The national bank laws dealing with the question of

interest, after insolvency, on deposits held by a national bank, were therefore not involved in that suit.”

In the case of *Gamble v. Wimberly*, 44 F. (2d) 329 the Circuit Court of Appeals for the Fourth Circuit, quoting from syllabus, held:

“Secured creditor of national bank in liquidating claims can retain interest and dividends accruing on collateral since date of debtor bank’s insolvency (12 USCA §194).” [45]

The contention of Defendant respecting the claimed right to subject the pledged securities to the payment of interest accrued subsequent to the insolvency of the Lyon County Bank also finds support in the following authorities: *Ticonic National Bank v. Sprague*, 303 U. S. ....; *Organ v. Winnemucca State Bank*, 55 Nevada 72, 26 P. (2d) 237; 9 C. J. S. §389, 513, 537.

Judgment for Defendant.

Dated this 16th day of June, 1938.

FRANK H. NORCROSS

District Judge.

[Endorsed]: Filed June 16, 1938. [46]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW.

This matter came on regularly for trial on the 18th day of March, 1938, before the Court without a jury, a jury trial having been duly waived by the parties; George L. Sanford and A. L. Haight appearing as attorneys for the plaintiff, and N. J. Barry appearing as attorney for the defendant.

From the evidence introduced, the Court finds the facts as follows, to-wit:

I.

That Lyon County Bank, in pursuance of the laws of the State of Nevada relating to banks, on February 16, 1932, was taken over by the State Bank Examiner as an insolvent bank; that on December 12, 1932, The Reno National Bank was adjudged to be insolvent by the Comptroller of the Currency, and W. J. Tobin was appointed and [47] qualified as Receiver thereof; that in pursuance of judgment and decree of the State District Court entered October 26, 1933, in accord with the state banking laws, the State Banking Examiner transferred all property of said Lyon County Bank to Lyon County Bank Mortgage Corporation, complainant herein.

II.

That among the assets of The Reno National Bank, when defendant took possession thereof as Receiver, there was a note of the Lyon County

Bank upon which there was then due as principal the sum of \$59,543.64.

### III.

That to secure the payment of said note, said Lyon County Bank had hypothecated to The Reno National Bank certain securities consisting of bonds, and notes secured by mortgage, as security for the payment of said principal obligation.

### IV.

That payments aggregating the sum of \$65,841.90 were received by the defendant and The Reno National Bank since February 16, 1932 on account of the indebtedness upon which a claim had been filed by defendant, and that of said sum, the sum of \$14,658.84 had been collected as interest on said collateral securities accruing after the date of insolvency of said Lyon County Bank.

### V.

That after applying said sum of \$14,658.84 to the payment of interest due on said primary obligation of the Lyon County Bank to The Reno National Bank up to the 21st day of October, 1936, and the balance remaining after the application of the interest, as aforesaid, on said primary obligation, and after the application of the balance of said sum of \$65,841.90 remaining after deducting the said sum of \$14,658.84 on said principal obligation, as aforesaid, [48] together with the sum of \$956.36, which consisted of a balance due to the credit of the Lyon

County Bank in The Reno National Bank, said indebtedness was reduced to the sum of \$9,316.94 on the 21st day of October, 1936.

## VI.

That in addition to the sums above mentioned, the defendant, on October 29, 1937, collected on the pledged security of H. E. Carter the sum of \$1,625.99, and on October 15, 1937, collected on the pledged security of E. S. Wedertz the sum of \$1,095. leaving a balance of \$6,595.95 owing from plaintiff to defendant; that the interest on the sum of \$9,316.94 from the 21st day of October, 1936 to the 18th day of March, 1938, less deduction of interest on said payments, is the sum of \$838.18, which said sum is now due, owing, unpaid and payable from the plaintiff to the defendant.

## VII.

That no evidence was introduced as to the allegations set forth in what is termed by plaintiff: "And for a Defense to said Purported Defense, Counter-Claim and New Matter", and that therefore there was no evidence upon which to base a finding as to said allegations.

As Conclusions of Law from the foregoing facts, the Court finds:

That plaintiff is indebted to the defendant in the sum of \$7,434.13, and that defendant have judgment against the plaintiff in the said sum of \$7,434.13, together with interest at the rate of 8% per annum

from the 18th day of March, 1938, and for costs of suit; and

It Is Ordered that judgment be entered herein in accordance herewith.

Dated: August 10th, 1938.

FRANK H. NORCROSS

District Judge.

[Endorsed]: Lodged Aug. 2, 1938. Filed Aug. 10, 1938. [49]

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[Title of District Court and Cause.]

### JUDGMENT.

This cause came on regularly for trial on the 18th day of March, 1938, before the Court without a jury, a jury trial having been duly waived by the parties; George L. Sanford and A. L. Haight appearing as attorneys for the plaintiff, and N. J. Barry appearing as attorney for the defendant.

Whereupon, witnesses on the part of plaintiff and defendant were duly sworn and examined, and documentary evidence introduced by the respective parties. The evidence being closed, the cause was submitted to the Court for consideration and decision, and after due deliberation thereon, the Court filed its Findings and Decision in writing and ordered that judgment be entered herein in favor of the defendant in accordance therewith.

Wherefore, by reason of the law and the findings aforesaid, [50] It Is Ordered, Adjudged and De-

creed that W. J. Tobin, as Receiver of The Reno National Bank, of Reno, Nevada, a National Banking Association, defendant, do have and recover of and from Lyon County Bank Mortgage Corporation, a Corporation, plaintiff, the sum of \$7,434.13, with interest thereon at the rate of 8% per annum from the 18th day of March, 1938, together with defendant's costs and disbursements incurred in this action amounting to the sum of \$58.44.

Dated: August 10th, 1938.

(Signed) FRANK H. NORCROSS

Judge of the United States District Court for the District of Nevada.

Sept. 2, 1938—This Judgment ordered set aside as inadvertently made.

O. E. BENHAM,

Clerk.

[Endorsed]: Lodged Aug. 2, 1938. Filed Aug. 10, 1938. [51]

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[Title of District Court and Cause.]

COMPLAINT TO RECOVER ON  
PROMISSORY NOTES

Aug. 10, 1938. Fil. & ent'g. judgment.

(Note: The above is in accordance with item No. 7 of Appellant's Praecipe, showing the notation on the docket of the filing and entering of the judgment of August 10, 1938.) [52]

[Title of District Court and Cause.]

MINUTES OF COURT OF SEPTEMBER 2,  
1938.

\* \* \* The Court: "Ordered that the findings of fact and conclusions of law and judgment made and entered on the 10th day of August, 1938, be, and the same hereby are, set aside as having been inadvertently made and entered, and It Is Further Ordered that defendant's proposed findings of fact, conclusions of law and form of judgment, lodged with the Court on August 2, 1938, and plaintiff's objections to defendant's proposed findings and judgment and plaintiff's proposed findings and judgment, filed Aug. 11th, 1938, stand submitted to the Court for consideration and decision." [53]

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[Title of District Court and Cause.]

MINUTES OF COURT OF SEPTEMBER 8,  
1938.

On this day the Court makes the following order, to-wit: "Ordered the order of Sept. 2nd, 1938, be, and the same hereby is, confirmed. The Court has considered the findings of fact, conclusions of law and judgment submitted by the defendant, the objections thereto and proposed findings of fact and conclusions of law submitted by and on behalf of the plaintiff, and the Court at this time presents for filing the Court's findings of fact and conclusions of law." \* \* \*

\* \* \* \* \*



The defendant is granted exceptions to the changes and modification made in the findings proposed by the defendant, and also to the modification and form of judgment. The plaintiff is granted an exception to any change made with respect to the findings of fact proposed by the plaintiff or any failure to include such proposed findings, and also an exception to the request of plaintiff for the entry of judgment in favor of the plaintiff. Ordered that if either party should desire any additional form of exceptions they may be called to the attention of the Court and entered at any time. [54]

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[Title of District Court and Cause.]

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This matter came on regularly for trial on the 18th day of March, 1938, before the Court without a jury, a jury trial having been duly waived by the parties; George L. Sanford and A. L. Haight appearing as attorneys for the plaintiff, and N. J. Barry appearing as attorney for the defendant.

From the evidence introduced, in addition to admissions made by the pleadings or supplementary thereto, the Court finds the facts as follows:

#### I.

That the Lyon County Bank, in pursuance of the laws of the State of Nevada relating to banks, on February 16, 1932, was taken over by the State Bank Examiner as an insolvent bank; that on

December 12, 1932, The Reno National Bank was adjudged to be insolvent by the Comptroller of the Currency, and W. J. Tobin was appointed and qualified as Receiver thereof; that in pursuance of judgment and decree of the State District Court entered October 26, 1933, in accord with the state banking laws, the State Banking Examiner transferred all property of said [55] Lyon County Bank to Lyon County Bank Mortgage Corporation, complainant herein.

## II.

That on February 16th, 1932, when the said Lyon County Bank was declared insolvent and was taken over by the state bank examiner, The Reno National Bank held and owned a demand note of Lyon County Bank dated July 1, 1931, for \$60,500., with interest at 8% per annum; interest paid to January 1, 1932. That on said February 16th, 1932, the said Lyon County Bank had on deposit with said The Reno National Bank the sum of \$956.36; that on February 16, 1932, there was due and unpaid upon said note the sum of \$60,500. principal and \$605.00 interest, making a total of \$61,105; that the said The Reno National Bank offset the said \$956.36 against the said principal obligation, leaving a balance of \$59,543.64 principal, and unpaid interest on said note from January 1st, 1932; That between February 16, 1932, and June 2, 1932, The Reno National Bank applied upon the said note from avails collected of securities held by it the further sum of \$1393.30; applying the same upon the principal of the note; that on September 1,

1932, The Reno National Bank filed a claim against the insolvent, Lyon County Bank, for the sum of \$58,150.34 principal on note, together with interest.

### III.

The Lyon County Bank on July 22, 1931, hypothecated to The Reno National Bank certain securities consisting of bonds, and notes secured by mortgages as security for the payment of all the indebtedness of Lyon County Bank to The Reno National Bank existing on the last-mentioned date, as well as all the future indebtedness to the said The Reno National Bank which the Lyon County Bank might thereafter incur. That at the time said promissory note of \$60,500. was given and at the time said collateral security agreements were made the Nevada Banking Act of 1911 and Sections 35, 53, and 72 thereof, and all of said act was in full force and effect. [56]

### IV.

Payments aggregating \$65,841.90 were received by The Reno National Bank and the defendant to October 21, 1936, as avails and proceeds from the said collaterals and securities, including the collection of \$956.36 of the credit balance of Lyon County Bank standing on open account and including other sums, in the period from February 16, 1932, to and including October 21, 1936. Interest accrued and was collected and retained by the said bank and defendant, being avails and proceeds from the said collaterals and securities covering the period from February 16, 1932, to and including October 21,

1936, in the total amount of \$2930.75 as follows, to-wit:

June 30, 1932, Mortgage Security Corporation	
bond coupons,	\$ 134.00
July 2nd, 1932, Walker River Irrigation	
District bond coupons,	498.67
Feb. 6, 1933, Mortgage Security Corporation	
bond coupon,	180.00
Feb. 23, 1933, H. E. Carter, interest on loan,	446.11
Feb. 23, 1933, E. S. Wedertz, " " "	640.75
Feb. 27, 1933, L. L. Wedertz, " " "	406.66
Jan. 1, 1936, L. L. Wedertz, " " "	622.00
Oct. 21, 1936, H. E. Carter, " " "	2.56
	\$2,930.75

#### V.

That payments aggregating the said sum of \$65,841.90 were received by the defendant and The Reno National Bank since February 16, 1932 on account of the indebtedness upon which a claim had been filed by defendant, and that of said sum, the sum of \$14,658.84 had been collected as interest on said collateral securities accruing after the date of insolvency of said Lyon County Bank.

#### VI.

That after applying said sum of \$14,658.84 to the payment of interest due on said primary obligation of the Lyon County Bank to The Reno National Bank up to the 21st day of October, 1936, and the balance remaining after the application of the interest, as aforesaid, on said primary obligation, and [57] after the application of the balance of said sum of \$65,841.90 remaining after deducting the said sum of \$14,658.84 on said principal obliga-

tion, as aforesaid, together with the sum of \$956.36, which consisted of a balance due to the credit of the Lyon County Bank in The Reno National Bank, said indebtedness was reduced to the sum of \$9,316.94 on the 21st day of October, 1936.

#### VII.

That in addition to the sums above mentioned, the defendant, on October 29, 1937, collected on the pledged security of H. E. Carter the sum of \$1,625.99, and on October 15, 1937, collected on the pledged security of E. S. Wedertz the sum of \$1,095.00, leaving a balance of \$6,595.95 owing to defendant; that the interest on the sum of \$9,316.94 from the 21st day of October, 1936, to the 18th day of March, 1938, less deduction of interest on said payments, is the sum of \$838.18, which said sum is now due, owing and unpaid to the defendant.

#### VIII.

Upon the trial it appeared from exhibits introduced that defendant had credited payments received upon collateral whether as principal or interest mainly upon the principal of the note and as so indorsed thereon the balance on the principal of the note as of October 21, 1936, was but one (\$1.00) dollar and a balance due on interest as of that date in the sum of \$7,698.52. Following receipt of a letter of date December 16, 1936, from the Executive Assistant Counsel of the Comptroller of the Currency, the defendant made a revision of said prev-

ious indorsements resulting in a balance due on principal as of October 21, 1936, of \$9,316.94.

As conclusions of law from the foregoing facts, the Court finds:

That interest continued to accrue on the said note of the Lyon County Bank, held by the Reno National Bank, after said [58] Lyon County Bank became insolvent and was taken over by the State Bank Examiner, and that the said pledged securities held by the Reno National Bank were subject to be disposed of by the Reno National Bank and the Defendant, Receiver thereof, and the proceeds of such pledged securities applied to the discharge of both the principal and accrued and accruing interest on said note.

That at the time of the institution of this suit and at the time of the trial thereof the principal and accrued interest upon said note had not been fully discharged.

That plaintiff is not entitled to any judgment against defendant. Defendant is entitled to judgment against plaintiff for his costs of suit.

It is ordered that judgment be entered herein in accordance herewith.

Dated this 8th day of September, 1938.

FRANK H. NORCROSS

District Judge.

[Endorsed]: Filed Sept. 8, 1938. [59]

[Title of District Court and Cause.]

JUDGMENT.

This cause came on regularly for trial on the 18th day of March, 1938, before the Court without a jury, a jury trial having been duly waived by the parties; George L. Sanford and A. L. Haight appearing as attorneys for the plaintiff, and N. J. Barry appearing as attorney for the defendant.

Whereupon, witnesses on the part of plaintiff and defendant were duly sworn and examined, and documentary evidence introduced by the respective parties. The evidence being closed, the cause was submitted to the Court for consideration and decision, and after due deliberation thereon, the Court filed its Findings and Decision in writing and ordered that judgment be entered herein in favor of the defendant in accordance therewith.

Wherefore, by reason of the law and the findings aforesaid, It Is Ordered, Adjudged and Decreed that plaintiff [60] take nothing by its action and that defendant have judgment against plaintiff for his costs and disbursements incurred in this action in the sum of \$58.44.

Dated this 8th day of September, 1938.

FRANK H. NORCROSS

Judge of the United States  
District Court for the Dis-  
trict of Nevada.

[Endorsed]: Filed September 8, 1938. [61]

[Title of District Court and Cause.]

PETITION FOR ALLOWANCE OF APPEAL.

Lyon County Bank Mortgage Corporation, a corporation, the complainant herein, believing itself aggrieved by the final decree and judgment made and entered in the above entitled cause, dated the 16th day of June, 1938, and filed herein the 16th day of June, 1938, and the formal judgment entered herein on the 8th day of September, 1938, does hereby appeal to the United States Circuit Court of Appeals for the Ninth District, for the reasons specified in the assignment of errors which is filed herewith, and it prays that this, its appeal, may be allowed, and that a citation may be issued herein as provided by law and directed to the defendant herein commanding him to appear before the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, to do and receive what may appertain to justice to be done in the premises, and that a transcript, record, proceedings and documents upon which decree and judgment was based, be duly authenticated and sent to the United States Circuit Court of [62] Appeals for the Ninth Circuit, sitting at San Francisco, California, in accordance with the rules of such court in such cases made and provided.

And your petitioner, the complainant herein, further prays, that an order of this court be entered allowing this appeal to be taken, upon the filing of a bond given and filed herewith in the sum of Three



Hundred Dollars (\$300.) or such other sum as the court may by order designate and require.

Dated this 14th day of September, 1938.

A. L. HAIGHT

GEORGE L. SANFORD

Attorneys and Solicitors for  
Complainant, Lyon County  
Bank Mortgage Corpora-  
tion, a corporation.

Received a copy of the foregoing appeal and petition for allowance of appeal this 15th day of September, 1938.

N. J. BARRY

Attorney and Solicitor for  
defendant W. J. Tobin, etc.

[Endorsed]: Filed September 14, 1938. [63]

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[Title of District Court and Cause.]

#### ASSIGNMENT OF ERRORS.

Comes now the above-named complainant, Lyon County Bank Mortgage Corporation, a corporation, by and through its attorneys and solicitors and respectfully submits the following assignment of errors, upon which it relies in support of its appeal from and prayer for reversal of, the judgment and decree made and entered in the above-entitled cause, dated the 16th day of June, 1938, and filed on the 16th day of June, 1938, and the judgment entered in said action September 8, 1938, in the District

Court of the United States for the District of Nevada, and says that in the findings, conclusions, and in said decree and judgment in said cause, there is manifest error, and for error the complainant assigns the following:

I.

The court erred in ordering judgment for defendant. [64]

II.

The court erred in awarding, giving and entering judgment for defendant.

III.

The court erred in refusing to enter the judgment for the Complainant as prayed for in the complaint.

IV.

The court erred in failing and refusing to find and adjudge that no interest on the indebtedness of Lyon County Bank to The Reno National Bank was payable, or could be charged or collected by The Reno National Bank, and that The Reno National Bank had no lien for any such charge, at any time, or for any period, after Lyon County Bank became insolvent and was taken over by the State Bank Examiner and The Reno National Bank had notice thereof.

V.

The court erred in finding and adjudging that after Lyon County Bank became insolvent and was taken over by the State Bank Examiner and

The Reno National Bank had notice thereof, The Reno National Bank had the right to apply the avails from the collaterals deposited with it, to the discharge of any alleged interest computed over such subsequent period upon the amount of the indebtedness of Lyon County Bank as of the day the Lyon County Bank became insolvent and was taken over by the bank examiner and The Reno National Bank had notice thereof.

## VI.

The court erred in finding and adjudging that it appeared from the exhibits in evidence, or was true, that after the defendant credited avails from collaterals mainly upon the principal of the note or indebtedness of Lyon County Bank that the balance due on the principal was one dollar (\$1) and the balance due on the interest was \$7698.52, both as of October 21, 1936; and the [65] court erred in finding and adjudging that following the receipt of a letter of date December 16, 1936, from the Executive Assistant Counsel of the Comptroller of the Currency, the defendant made a revision of said previous endorsements "resulting in a balance due on principal as of October 21, 1936 of \$9316.94," whereas in fact and in law said revision was not in conformity with said letter and said revision was not legal or proper and was incompetent to change the amount lawfully due by said Lyon County Bank to The Reno National Bank on October 21, 1936 or fix it in the sum of \$9316.94 or other sum, except as alleged in the complaint.

## VII.

The court erred in finding and adjudging that interest computed on the indebtedness of Lyon County Bank to The Reno National Bank, as it stood on the day the Lyon County Bank became insolvent and was taken over by the State Bank Examiner to the knowledge of The Reno National Bank was not a "liability thereafter incurred" or that it was not such a liability respecting which Section 53 of the State Banking Act, approved March 22, 1911 (N. C. L. 1929 Sec. 702) provides among other things that

"\* \* \* No bank, corporation, firm or individual, knowing of such taking possession by the examiner, shall have a lien or charge for any payment, advance or clearance thereafter made, or liability thereafter incurred against any of the assets of the bank of whose property and business the examiner shall have taken possession as aforesaid. \* \* \*"

And the court erred in finding and adjudging by implication that the collaterals of the Lyon County Bank so deposited with The Reno National Bank were not assets of The Lyon County Bank.

## VIII.

The court erred in finding and adjudging by implication that the National Banking law and/or the National Bankruptcy [66] laws apply to this case.

## IX.

The court erred in finding and deciding and adjudging and in basing its findings and judgment on the theory applied to this case that a secure creditor has the right to retain collaterals and to charge interest on the indebtedness existing at the time of insolvency of a state bank and to apply the avails of such collaterals to the total principal and interest so charged and to retain the collaterals until the entire debt with the said interest is fully paid, in the face of the provisions of said Section 53 of the State Banking Act of 1911 and in the face of the collateral-security agreement between the parties, dated July 22, 1931, as affected by said statute.

## X.

The court erred in finding and adjudging that the said collateral-security agreements of July 22, 1931 were given to secure or did or do secure, the payment of any interest on the indebtedness of Lyon County Bank as it stood when said bank became insolvent and was taken over, as aforesaid, computed for any period after the said day of insolvency, taking over with knowledge as aforesaid.

## XI.

The court erred in failing and refusing to find and adjudge that the so-called revision of credits and endorsements on the note of Lyon County Bank was illegal, improper and inadmissible and without the consent or authority of Lyon County Bank and

was made to the detriment of Lyon County Bank and defendant was and is estopped to make or rely on any such so-called revisions.

## XII.

The court erred in refusing to make the special findings timely requested by the complainant, notwithstanding such requested findings are supported by the weight of the evidence and the [67] evidence would support no finding or conclusion other than that requested by the complainant.

## XIII.

The court erred in failing to find or adjudge on the material issue, drawn in issue, respecting the legality of and warrant or lack thereof, for the so-called recasting and revising and re-allocation of credits on the collaterals and on the primary obligation in accounting for the avails from the said collaterals, or the sufficiency of said accounting.

## XIV.

The court erred in refusing and failing to give effect to the provisions of Section 35 of the Banking Act of Nevada of 1911 being N. C. L. 1929 Sec. 664 and in finding and deciding and adjudging that to pay interest on the indebtedness of the Lyon County Bank to The Reno National Bank as it stood when the Lyon County Bank became insolvent and was taken over by the bank examiner, would not constitute giving a preference to a creditor, which is prohibited by law.

Dated September 14, 1938.

A. L. HAIGHT

GEORGE L. SANFORD

Attorneys for Complainant.

Received a copy of the foregoing Assignment of Errors this 15th day of September, 1938.

N. J. BARRY

Attorney and Solicitor for defendant W. J. Tobin, etc.

[Endorsed]: Filed Sept. 14, 1938. [68]

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[Title of District Court and Cause.]

ORDER ALLOWING APPEAL.

This action coming on to be heard this 14th day of September, 1938, upon the petition of Lyon County Bank Mortgage Corporation, a corporation, complainant, for an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, together with complainant's assignment of errors, and the court being fully advised, it is

Hereby Ordered that an appeal to the United States Circuit Court of Appeals, for the Ninth District, from the final judgment made and entered in this action, dated June 16, 1938, and filed June 16, 1938, and the formal judgment made and entered in this action September 8, 1938, be, and the same is hereby allowed and that a certified transcript of the record, proceedings and documents upon which said judgment was made be transmitted to said

United States Circuit Court of Appeals, for the Ninth Circuit; and it is

Further Ordered that said appeal be allowed upon the filing of an appeal bond by the complainant in the penal sum of Three Hundred Dollars (\$300.00) approved by [69] this court.

Further Ordered that the time for the filing and serving complainant's bill of exceptions and complainant's praecipe to the clerk for copies of the record and for the service of all citations, be, and the same is hereby enlarged and extended to and including the 17th day of October, 1938.

Dated September 14, 1938.

FRANK H. NORCROSS

District Judge.

Service of a copy of the foregoing order is hereby acknowledged this 15th day of September, 1938.

N. J. BARRY

Attorney for Defendant.

[Endorsed]: Filed Sept. 14, 1938. [70]

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[Title of District Court and Cause.]

ORDER RESERVING JURISDICTION AND  
EXTENDING TIME.

Good Cause Appearing, it is hereby ordered that jurisdiction of the above entitled action and the judgment term of this court be and are hereby reserved and continued into and through the



October, 1938, term of this court, for all purposes connected with the above entitled action.

Dated this 14th day of September, 1938.

FRANK H. NORCROSS

District Judge.

Service by copy of the foregoing order is hereby acknowledged this 15th day of September, 1938.

N. J. BARRY

Attorney for Defendant.

[Endorsed]: Filed Sept. 14, 1938.

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[Title of District Court and Cause.]

COST BOND ON APPEAL.

Know All Men By These Presents: That Lyon County Bank Mortgage Corporation, a corporation, as principal, and Fidelity and Deposit Company of Maryland, a Maryland corporation, as surety, are held and firmly bound unto W. J. Tobin, as Receiver of The Reno National Bank, of Reno, Nevada, a National Banking Association, and his successors and assigns, in the sum of Three Hundred Dollars (\$300.00), lawful money of the United States of America, to be paid unto the said obligee, his successors or assigns, to which payment, well and truly to be made, we do bind and oblige ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 14th day of September A. D. 1938.

Whereas, lately at a term of the District Court of the United States for the District of Nevada, a final judgment was [72] entered against the complainant and principal above named that the complainant take nothing by its said action therein, and that defendant have judgment for costs, all as therein specified, and

Whereas, said complainant and principal above named has obtained an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse said judgment,

Now, Therefore, the condition of this obligation is such that if the above named, Lyon County Bank Mortgage Corporation, a corporation, shall prosecute its said appeal to effect and answer all costs if it fails to make good its plea and if it fails to sustain its appeal, then this obligation shall be void, otherwise to remain in full force and effect.

LYON COUNTY BANK MORTGAGE CORPORATION a Corporation, Principal.

By C. E. BLAIR

Its manager, hereunto duly authorized.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Surety

[Seal]

By A. L. HAIGHT

Its Attorney-in-Fact.

The within, annexed, and foregoing bond is hereby approved both as to sufficiency and form, this 14th day of September, 1938.

FRANK H. NORCROSS

District Judge.

Received a copy of the foregoing Cost Bond on Appeal this 15th day of September, 1938.

N. J. BARRY

Attorney and Solicitor for defendant W. J. Tobin, etc.

[Endorsed]: Filed Sept. 14, 1938. [73]

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[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE.

State and District of Nevada,  
County of Ormsby—ss.

Homer Mooney being first duly sworn deposes and says: that he is a male citizen of the United States over the age of 21 years and not interested in the outcome of the above entitled action; that on the 14th day of September, 1938, at about the hour of 12 o'clock noon on said day at the request of George L. Sanford, one of the attorneys for the complainant above named, he, the deponent, delivered to Mary Thompson, a clerk in the office of N. J. Barry, attorney for the defendant, in the office of said N. J. Barry, in the Clay Peters Bldg., Reno,

Nevada, certain original papers and files in said action and certain certified copies of the same as hereinafter set forth; that at said time the said N. J. Barry was absent from said office and said Mary Thompson stated to affiant that said N. J. Barry would return to his office late that afternoon, probably, and would sign an acknowledgment of service of said papers on the same and would forward the said [74] papers so signed to the clerk of the above entitled court.

That the original papers hereinabove mentioned are as follows:

Complainant's objections filed September 14, 1938;

Complainant's petition for allowance of appeal filed September 14, 1938;

Complainant's assignment of errors, filed September 14, 1938;

Order allowing appeal, fixing bond and extending time, signed and filed September 14, 1938;

Order reserving jurisdiction signed and filed September 14, 1938;

Cost bond on appeal, executed, made, signed and approved and filed September 14, 1938;

Citation on appeal issued September 14, 1938.

That the certified copies delivered as aforesaid were certified copies of the above described original papers.

Deponent deposes further that the said original citation on appeal was duly returned and filed in court September 16, 1938, and bears the acknowledgment of receipt of copy signed by N. J. Barry, attorney for defendant, dated Septemebr 15th, 1938. That the other papers have been returned to the clerk of the court and bear the acknowledgment of receipt of copy signed by N. J. Barry aforesaid, dated September 15, 1938.

Further than this deponent saith not.

HOMER MOONEY.

Subscribed and sworn to before me this 16th day of September, 1938.

[Seal] MABEL H. STEWART  
Notary Public, Ormsby County, Nevada.

My Commission Expires Jan. 17, 1941.

[Endorsed]: Filed Sept. 16, 1938. [75]

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[Title of District Court and Cause.]

COMPLAINANT AND APPELLANT'S BILL  
OF EXCEPTIONS AND STATEMENT OF  
THE EVIDENCE.

Be It Remembered that the above-entitled cause came on regularly for trial before Honorable Frank H. Norcross, United States District Judge presiding, a jury being waived, in the above-entitled court, on March 18, 1938, and was tried before said court on that day upon the issues made by the bill

of complaint or declaration, the answer and the reply; that plaintiff lodges this bill of exceptions and statement of the evidence in said cause, to-wit:

W. J. TOBIN

was called by the plaintiff as an adverse witness and was duly sworn and testified as follows:

I have been receiver of The Reno National Bank since [76] December 9, 1932. This (indicating the document now represented by Exhibit 1) is the original note executed by the Lyon County Bank of \$60,500. The notations here represent payments that were made and in some instances the notations indicate from what source payments were derived. Some of them were credited upon principal and some upon interest as shown upon the two sheets. Apparently some interest applications were made after the suspension of The Reno National Bank. The note shows the manner of crediting the payments. It shows as of October 21, 1936 a principal balance due of one dollar and interest due of \$9056.36.

(Plaintiff's Exhibit No. 1 was offered and received in evidence and by stipulation a copy was filed in place of the original note and annexes.)

(Testimony of W. J. Tobin.)

PLAINTIFF'S EXHIBIT NO. 1.

COPY

\$60,500.00

Reno, Nevada, July 1, 1931

On Demand after date, without grace, for value received, Lyon County Bank a corporation, promises to pay to The Reno National Bank or order, at its banking office in Reno, Nevada, The sum of Sixty Thousand Five Hundred 00/100 Dollars in lawful money of the United States, with interest thereon at the rate of eight per cent per annum from date until paid. Interest payable on Demand, also after judgment.

The endorsers, sureties, guarantors and assignors, severally waive presentation for payment, protest and notice of protest for non-payment of this note, and all defenses on the ground of any extension of time of its payment that may be given by the holders to them or either of them, or to the maker thereof. In the event of non-payment of this said note at maturity, or its collection by suit, this corporation agrees to pay all expenses that may be incurred thereby, including a reasonable attorney's fee, and to that end binds itself, its successors and assigns forever. For the purpose of attachment or levy of execution, this note shall be payable wherever this corporation, or

(Testimony of W. J. Tobin.)

any of its property may be situated, at the option of the holder.

[Seal] In witness whereof, the said corporation has caused this instrument to be executed and its corporate seal to be hereunto affixed by its proper officers first thereunto duly authorized.

By GEO F. WILLIS,  
Secretary.

LYON COUNTY BANK  
By J. I. WILSON  
President.  
No. 5166.

Form 188 [77]

(ON BACK)

<u>Endorsements on Principal</u>		
<u>Date</u>	<u>Amount</u>	<u>Bal. due on Prin.</u>
2-23-32	\$ 1,000.	\$59,500.00
3- 3-32	956.36	58,543.64
3- 8-32	180.00	58,363.64
5- 3-32	106.65	58,256.99
6- 1-32	106.65	58,150.34
2- 6-33	180.00	57,970.34
2-23-33	3,765.56	54,204.78
2-23-33	4,919.00	49,285.78
2-27-33	4,080.25	45,205.53
5-10-33	20.00	45,185.53
7- 8-33	4,481.79	40,703.74
4-20-34	150.00	40,553.74
4-20-34	50.00	40,503.74
11-30-34	1,499.23	39,004.51
12-24-34	5,000.00	34,004.51
2-19-35	4,135.78	29,868.73
2-25-35	2.45	29,866.28



(Testimony of *W. J. Tobin.*)

4-19-35	3,643.31	26,222.97
5-31-35	3,976.88	22,246.09
6-10-35	14,306.16	7,939.93
6-17-35 (Red ink)	40.79	7,980.72
7- 2-35	456.74	7,523.98
10-24-35	2,000.00	5,523.98
1- 4-36	3,329.75	2,194.23
6-16-36	100.00	2,094.23
10-21-36	2,093.23	1.00

Endorsements on Interest

12-16-31	2,420.00	to 12-31-31
6-30-32	180.00	on acct.
6-30-32	660.00	“
7- 2-32	660.00	“
7- 8-32	106.65	“
8- 8-32	106.65	“
8-13-32	110.00	“
9- 8-32	106.65	“
10-14-32	106.65	“
2-23-33	574.44	“
2-23-33	866.25	“
2-27-33	498.00	to 11-5-32
2-27-33	9.77	on acct.
10-21-36	Balance due on Interest	\$9,056.36
10-21-36	1,357.84	on Acct.
	Balance due on Interest	7,698.52

There were some interest applications after the suspension of The Reno National Bank. At the time the note was made or a short time thereafter there were certain securities that were [78] transferred to The Reno National Bank and pledged as collateral for the loan.

There were \$6000 first lien certificates of the Mortgage Securities Corporation of America,

(Testimony of W. J. Tobin.)

Series B-10 of January 1, 1941 maturity, numbers 9505-9510 inclusive.

On March 8, 1932 the bank received a payment of \$180. That was interest coupons. The Reno National Bank applied it as a principal payment on the Lyon County Bank note. The next payment was on June 30, 1932 account Mortgage Securities Corporation. That was applied on the interest on the note. I assume it represented the current interest from January 1, 1932 to July 1, 1932.

On February 6, 1933 the next payment was made on this security, \$180. That covered interest from July 1, 1932 to January 1, 1933. That payment was applied on the principal of the original note of \$60,500.

November 30, 1934 I sold those bonds for \$1499.23. That amount was originally endorsed upon the original Lyon County note as a principal payment.

On the Walker River bonds which were turned over by Lyon County Bank on July 22, 1931 to The Reno National Bank there was a payment June 10, 1935 of \$14,306.16. But the first one was \$660 which was interest on these bonds, presumably. The interest covered was the six months to January 1, 1932. That was applied as an interest payment and it was applied on June 30, 1932. The next payment of \$660.00 was July 2, 1932 which was interest—apparently, paid to July 1, 1932, the succeeding six

(Testimony of W. J. Tobin.)

months. That payment was applied as interest upon the original Lyon County note of \$60,500.

The next transaction under this security was on June 10, 1935. It was \$14,306.16 applied on principal. That closed the transaction so far as the bonds were concerned.

The amount on the Montelatici note was \$8000 secured by [79] mortgage. The first payment on the note was May 3, 1932 in the amount of \$106.65. The Montelatici note was dated June 20, 1930. The \$106.65 paid the interest to August 20, 1931. It was from June 20, 1931 to August 20, 1931.

On June 1, 1932 the record shows payment of \$106.65. That was applied, according to the records, as an interest payment covering interest to October 20, 1931. The entry of June 1, 1932, while that was interest, was applied as a principal payment on the Lyon County note for \$60,500.

The next payment was on July 8, 1932—\$106.65. That amount was applied as a principal payment upon the Lyon County (Bank) note.

The next payment was on August 8, 1932—\$106.65 and that was applied as interest on the Montelatici note and it was applied on the Lyon County Bank note as a principal payment.

The next payment was September 8, 1932—\$106.65.

On July 8, 1932, August 8, 1932, September 8, 1932 and October 14, 1932—on each of these four dates—there was \$106.65 paid on the Montelatici

(Testimony of W. J. Tobin.)

note, and this amount was applied as interest upon the Lyon County Bank note of \$60,500.

On May 10, 1933 there was a twenty-dollar principal payment on the Montelatici note and on the principal of the primary note of the Lyon County bank.

On April 23, 1934 a payment of \$150 was credited on principal in both cases.

December 24, 1934 the sum of \$5000 was credited—\$5000 on the principal of the Montelatici note—\$5000 on the principal of the primary Lyon County bank note.

The Yparraguirre note is dated June 15, 1931 in the original amount of \$24,800, with interest at 8% payable semi-annually. No interest and endorsements had been made up to February 16, 1932. [80]

The first original endorsements was February 23, 1933—\$1788, \$1788, and \$1794—three on the same day. That was applied as a principal payment. I don't see now the application of these amounts on the primary note of the Lyon County bank of \$60,500.

On May 31, 1935 there is an endorsement of a payment of \$3936.09. That was realized from the sale of real estate that we had a mortgage on that belonged to Yparraguirre. That was entered as a principal credit on the Yparraguirre note and was originally endorsed as a principal payment upon the primary note of Lyon County bank of \$60,500. There were three notes by H. E. and Rowena

(Testimony of W. J. Tobin.)

Carter, \$1788; L. L. and Juanita Wedertz, \$1788; and Elmer and Cora Wedertz, \$1794, representing sheep belonging to Yparraguirre (Accountable to us). They explain the principal endorsement on the Yparraguirre note made February 23, 1933.

The David Jones note has been paid and returned and we don't have it. I have a notation that it was dated February 27, 1930—\$16,500—interest 8%. The interest had been paid to February 27, 1931. According to the original endorsement there was a payment on February 23, 1932 in the amount of \$1000. It was applied as principal on the primary obligation and to principal on the collateral. I couldn't say when that interest was paid to February 27, 1931. I haven't the note here.

The next payment was received upon this (Jones) note July 8, 1933. It amounted to \$4481.79. I couldn't say if it was received upon refinancing through the R. A. C. C. There was refinancing. That was applied upon the Jones note as principal and went on principal on the primary obligation of the Lyon County Bank.

On April 26, 1934 the sum of \$50 was paid and applied on principal in both instances. The next payment was February 19, 1935. I imagine it was in final liquidation of that asset. We [81] had to take over the outfit—the sale of the sheep. The amount of that payment February 19, 1935 was \$4135.78—applied on principal in both instances. Following payments are tabulated as follows:

(Testimony of W. J. Tobin.)

February 25, 1935.....	\$ 2.45
April 19, 1935.....	3643.31
January 16, 1936.....	100.00
April 2, 1935.....	456.74

All these were applied on principal in both cases (on principal of the collateral note and on principal of the primary note of Lyon county bank of \$60,500).

The last payment of \$100, January 16, 1936, we accepted as a compromise of the remaining indebtedness after all the property had been liquidated. We accepted it in full discharge of that note and obligation, with the consent of the Lyon County Bank. I am quite sure we have such a consent.

The L. L. Wedertz note was dated May 15, 1931—\$5,000—interest 8%.

February 27, 1935 there was \$4080.25 paid and endorsed as a principal payment on the collateral and on the primary obligations.

On January 4, 1936 there was \$3329.75 paid and \$2707.75 was endorsed as a principal payment on the Wedertz note and \$622. was applied as interest, and the full amount \$3329.75 was applied upon the principal of the main obligation.

There is \$507.77 interest applied February 27, 1933—applied as interest on the collateral note of L. L. Wedertz and applied as interest on the primary obligation. It actually makes the payment made on February 27, 1933, \$4588.02 instead of

(Testimony of W. J. Tobin.)

\$4080.25. There was that much realized on that date.

The H. E. Carter note was dated May 1, 1931—\$5500—interest 8%.

The first payment on that note was February 23, 1933— [82] \$3765.56—applied as principal payment on the collateral note and on the primary obligation. Upon the same date there was received and applied upon the interest \$574.44 and it paid the interest from May 1, 1931 to February 23, 1933 on the collateral. October 24, 1935, \$2000. was received and applied on the principal of the collateral and the principal of the primary obligation. October 21, 1936—\$1523. of which \$1520.44 was applied on the principal of the Carter indebtedness and \$2.56 on the interest. On the primary obligation of the Lyon County Bank \$165.16 was applied on principal and \$1357.84 was applied on interest. On the Carter note the entire sum was applied on the principal—all but \$2.56. The Carter note (\$1788) held as collateral for the Yparraguirre note, because of sale of sheep, accounts for the difference in the collections.

On October 29, 1937 I collected \$873.05 from Carter—a payment made by the Nevada Live Stock Credit. It was the balance due on those obligations. This is being held in cash pending the outcome of this litigation. I returned the Carter note under an understanding with the Lyon County Bank that it was satisfactory to cancel and return the note.

(Testimony of W. J. Tobin.)

The E. S. Wedertz note was dated February 27, 1931—\$7300 at 8%. As of February 16, 1932 there does not appear to be any endorsement on the original note of interest payment and there is nothing prior to 1932. The first endorsement on the note of any payment is February 24, 1933 when there was \$866.25 interest endorsed and \$4819.00 principal. There was \$4919 applied on the principal and \$866.25 applied as interest on the primary obligation—on the Lyon County Bank note and on the Wedertz note—the same way.

On October 21, 1936, the next payment, there was \$1928.07 paid and of that amount \$135.07 went on the Wedertz original indebtedness (that is the \$7300 note) and \$1793 was applied on the [83] note taken for Yparraguirre sheep and the full amount was endorsed on the principal of the primary obligation of the Lyon County Bank. It was applied upon the principal of the sub-collateral in each case—also upon the principal of the primary obligation of the Lyon County bank.

The next payment was November 15, 1937, after the suit started. Amount \$1095—and by an understanding with the plaintiff it was applied as a principal payment on the sub-collateral.

As to an item on August 13, 1932 of “Simpson interest”—\$110, my explanation from the records is that if the interest on the F. W. Simpson obligation of \$5000 (which is not a part of the claim or involved in this case) was paid twice—once by



(Testimony of W. J. Tobin.)

Simpson and once by Lyon County Bank—that the Lyon County Bank got credit for the \$110 as an interest payment on the primary obligation of \$60,-500. (The witness is here testifying in explanation of a tabulation and list of payments delivered to plaintiff which is pleaded, set out and annexed in Plaintiff's reply Exhibit "A"). The securities which The Reno National Bank held included notes given by people who lived in Yerington, Nevada (where Lyon county bank was located). Prior to the failure of the Lyon County Bank, the Lyon County Bank in some cases received collections on some of this collateral and then remitted them to The Reno National Bank. There is a letter dated October 8, 1932 addressed to Lyon County Bank reading:

“Gentlemen: We have today applied the following amounts as interest upon your notes: The Reno National Bank \$106.65; Bank of Nevada Savings and Trust, \$110. The above amounts represent payments made by Narciso Montelatici and others.”

There is a letter by The Reno National Bank to the Lyon County Bank dated September 8, 1932 as follows:

“Gentlemen: We have received remittance from Narciso Montelatici to apply on indebtedness as follows: On \$8,000, interest to April 20, 1931, \$110.65. This amount, in turn, has been applied toward payment of the interest on

(Testimony of W. J. Tobin.)

your note for \$58,150.34 dated July 1, [84] 1931. On the Montelatici mortgage, originally for \$2000, we have received \$109.33 of which \$100 has been applied on the principal and \$9.33 on the interest to September 1, 1932. This leaves a balance due on the Montelatici mortgage of \$1300. We have in turn applied the above amounts on your note of October 13, 1931 as follows:"—— (Witness ceases reading, counsel stating it is sufficient.)

The only Montelatici note in view here is the \$8000 note.

(Here the Montelatici note is received in evidence Plaintiff's Exhibit 2 for identification.)

#### PLAINTIFF'S EXHIBIT 2.

(For identification.)

\$8000.00      Yerington, Nevada, June 20, 1930

Fifteen months after date without grace, for value received, we, jointly and severally promise to pay to Lyon County Bank or order in Yerington, Nevada, the sum of Eight Thousand Dollars in U. S. gold coin with interest thereon at the rate of eight per cent per annum from date until paid. Interest payable semi-annually also after judgment.

(PAID Received 12/31/32 Yerington, Nevada.)

The endorsers, sureties, guarantors and assignors, severally waive presentation for payment, protest and notice of protest, for non-

(Testimony of W. J. Tobin.)

payment of this note and all defenses on the ground of any extension of time of its payment that may be given by the holder or holders, to them or either of them, or to the maker or makers thereof. In the event of the non-payment of this said note at maturity, or its collection by litigation, we jointly and severally agree to pay all expenses that may be incurred thereby, including attorney's fee, and to that end bind ourselves, heirs, executors, administrators and assigns forever. For the purpose of attachment or levy of execution, this note shall be payable wherever we may be situated at the option of the holder.

Signed NARCISO MONTELATICI  
 CONCETTA MONTELATICI  
 EUGENE MONTELATICI

Rediscounted with Reno  
 National Bank  
 No. 6539

(PAID Lyon County Bank, Yerington,  
 Nevada.)

Name Narciso Montelatici, Concetta Montelatici, and Eugene Montelatici.

		Payments	
	Date	Interest	Principal Balance
No. 6539	Date 6/20/30	Amount	\$8000.00
	When due 15 mos.	Interest,	\$ 8%

(Testimony of W. J. Tobin.)

Endorsers or collateral Real and Chattel Mtg.  
on Hotel Patricia

Approved GFW JIW

Notice sent [85]

(ON BACK)

<u>Endorsement on Interest</u>		
May 3-32	\$106.65	to Aug 20 1930
June 1-32	\$106.65	to Oct 20 1930
July 8 1932	\$106.65	to Dec 20 1930
Aug 8 1932	\$106.65	to Febry 20 1931
Sept 8 1932	\$110.65	to Apr 20 1931
Oct 14 1932	\$106.64	to June 20 1931

<u>Endorsement on Interest</u>		<u>Balance Due on Principal</u>	
<u>Endorsement on Principal</u>			
May 10 1933	\$20	P	\$7980.00
Apr 20 1934	\$150-	A	\$7830.

I  
D

1-11-25	640
	586.67
	44.44
	<hr/>
Insurance prem- ium collected by Reno National—Not advised 1773.34 To 3/31/34	1271.11

(W. J. TOBIN)

resuming) This exhibit shows \$110.65 paid on September 8, 1932, interest to April 20, 1931.

At this time we hold a note or security of Elmer S. Wedertz dated February 27, 1931 in the original amount \$7300, with interest at 8% in connection with this transaction.

(Testimony of W. J. Tobin.)

On the basis of the original endorsement the balance unpaid on this is \$1150.93 principal and interest is paid to February 22, 1933.

We also have a note of Elmer S. Wedertz and Cora H. Wedertz dated February 21, 1933 in the original amount of \$1794 with interest at 8% and according to the original endorsement there is a dollar principal balance due and no interest has been paid.

The original endorsements on the back of the note for \$1794 dated February 21, 1933, show a payment October 21, 1936 of \$1793 and no endorsement whatever upon the interest. The interest from February 1933 to October 1936 has never been paid. [86] We applied it originally as a principal payment.

We also hold a note of P. M. Yparraguirre dated June 15, 1931, in the original amount of \$24,800 with interest at 8%. I have already testified as to the endorsements on that note. I believe that is all the notes of security.

I write a letter to Mr. Wedertz on November 16, 1937. This letter is dated November 16, 1937, addressed to Mr. E. S. Wedertz, Wellington, Nevada (reading) "Dear Sir: This is to inform you the Nevada Livestock Production Credit Association has transmitted to this address, for application on principal of your indebtedness, \$1095.00. After application of the above funds, your obligation consists of principal balance \$1151.93 and accrued

(Testimony of W. J. Tobin.)

interest to October 21, 1937, \$1403.72. Yours very truly" (end of reading).

On

Cross-Examination.

By Mr. Barry,

attorney for defendant, the witness and defendant testified as follows:

There was a letter from the Nevada Livestock Production Credit Association dated November 15, 1937, addressed to me (reading) "As promised in our letter of November 10th, we now enclose herewith our check in the sum of \$1095 to be applied on the principal indebtedness of Mr. E. S. Wedertz to your trust. Kindly acknowledge receipt to both this association and to Mr. Wedertz, giving us new figures as to the standing of his account, after application of the enclosed payment. Sincerely, Bernard Metcalf, Secretary and Treasurer." There is a postscript (reads) "If for any reason above payment cannot be applied entirely upon the principal indebtedness, please hold up and advise us immediately."

I made some endorsements on the original Lyon County Bank note. Those that were made after November 1932 were made in my office under my direction. At first I made application of all receipts, to the principal indebtedness. There was no direction [87] from Lyon County Bank at any time as to how the application should be made. I did not

(Testimony of W. J. Tobin.)

make the application with authority of the Comptroller of the Currency (Objected to) I made it as an agent of the Comptroller of the Currency (Objection repeated and court ruled the matter might go in subject to the objection. There was no further ruling and no further opportunity to object or except). To this action Complainant excepts.

I eventually received instructions from the Comptroller of the Currency as to the manner of applying the payments—after I had already made the application. (Defendant's exhibit A offered in evidence. Objected to, the court admitted it "for what it is worth and consider the weight, if any, later." No further ruling and no further opportunity to object or except.) To this action Complainant excepts.

Defendant's Exhibit A, letter dated December 16, 1936 to defendant from Kit Williams, Executive Assistant Counsel, Comptroller of the Currency.

(Testimony of W. J. Tobin.)

DEFENDANT'S EXHIBIT "A"

Treasury Department  
Comptroller of the Currency  
Washington

December 16, 1936

Mr. Walter J. Tobin, Receiver  
The Reno National Bank  
Reno, Nevada.

REFER CC-LD

Dear Sir:

This will acknowledge receipt of your letter of December 7, 1936 with enclosures referring to your Asset No. 552 representing a bills payable obligation due the Reno National Bank by the Lyon County Bank, now insolvent. You have enclosed a letter from the attorney representing the Lyon County Mortgage Corporation, liquidating Agent for the Lyon County Bank, taking exception to your position that you are entitled to payment in full of Asset No. 552 including interest up to the date of payment in full. You advise that there is now due your trust on Asset No. 552 the sum of \$1.00 representing the principal amount due and \$7698.52 representing the amount still due in the way of interest.

It is our understanding that you have applied from the collections made on the pledged assets representing both principal and income



(Testimony of W. J. Tobin.)

collections an amount sufficient to pay the bills [88] payable obligation with the exception of \$1.00 due in the principal amount of the obligation and the amount you claim still to be due in the way of interest. It is also our understanding that the amount so applied by you represents not only collections made on the principal amounts due on the pledged assets but also collections made from these pledged assets which consist of income or interest accrued upon the assets after the date of closing of the Lyon County Bank. Under the rule stated in the case of *Gamble v. Wimberly*, 44 F.(2) 329, you are entitled to retain the pledged assets and apply toward interest due on your claim after suspension of the Lyon County Bank all income earned upon and collected from the pledged assets after the date of closing of the Lyon County Bank. It appears therefore that a portion of the collections made by you and applied toward payment of the principal amount due on the bills payable obligation represented in fact income or interest earned upon the pledged assets after the date of closing of the Lyon County Bank. If this is true, you should have applied toward the interest due on your bills payable obligation the income accrued upon and collected from the pledged assets after the date of closing of the Lyon County Bank. Such an application would have reduced the amount of

(Testimony of W. J. Tobin.)

interest still due on the bills payable obligation and increased the amount of principal still due on this obligation, permitting you to receive on your claim against the Lyon County Bank dividends, under the rule stated by the Supreme Court in the cases of *Merrill v. National Bank*, 173 U. S. 131; 43 L. Ed. 640 and *Aldrich v. Chemical National Bank*, 176 U. S. 618; 44 L. Ed. 611 until the payment of dividends from the Lyon County Bank due on your claim and the collections made from the principal amount of the pledged assets would pay in full your claim. You are accordingly instructed to revise the principal and interest amounts still due on your claim against the Lyon County Bank and furnish us with a statement indicating the amount still due in principal and interest on your claim against the Lyon County Bank. You will arrive at the amount still due by following the procedure hereinafter indicated:

1. Indicate the amount of collections from the pledged assets representing income due on these pledged assets and collected from the assets after the date of closing of the Lyon County Bank. This amount will be applied by you toward payment of the interest due on your claim after the date of closing of the Lyon County Bank.
2. Apply toward payment of the principal amount due on your claim all collections

(Testimony of W. J. Tobin.)

made from the pledged assets representing the principal amount due on the pledged assets and actually collected from these assets.

3. In the event the amount of collections made from the income earned upon the pledged assets after suspension is more than sufficient to pay all interest due on your claim against the Lyon County Bank, the amount of such excess will be applied by you toward payment of the principal amount due on your claim against the Lyon County Bank.

We believe that our position relative to your rights against the Lyon County Bank is sustained by the decision handed down by the Ninth Circuit Court of Appeals on December 7, 1936 in the case of *Douglass et al v. Thurston County*, copy enclosed. [89] In that opinion the Circuit Court of Appeals held that a secured creditor of an insolvent national bank was not entitled to interest from any source on his claim after the date of closing of a national bank. In the opinion, the court discussed the case of *Washington-Alaska Bank v. Dexter Horton Nat'l Bank* (C. C. A. 9th), 263 Fed. 304, 306-307. The County Treasurer relied upon that decision as sustaining his right to receive interest upon his secured deposit after the date

(Testimony of W. J. Tobin.)

of closing of the national bank. The Circuit Court of Appeals held with respect to this question "That the case is easily distinguishable from the one at the bar. There the national bank was the plaintiff, seeking to foreclose a lien on collateral given by a state bank. The national bank laws dealing with the question of interest, after insolvency, on deposits held by a national bank, were therefore not involved in that suit."

The Washington-Alaska Bank case above mentioned was decided in 1920. Your attorney should advise us whether or not there have been any changes in the Nevada laws relating to state banks in Nevada which would now support the position of the attorney for the Lyon County Bank Mortgage Corporation that no interest is properly payable on the bills payable obligation held by your trust after the date of closing of the Lyon County Bank. Please advise us fully relative to the opinion of your attorney in this question and also furnish the statement indicating the amount still due in principal and interest on your claim against the Lyon County Bank.

Very truly yours,

s/ KIT WILLIAMS

Executive Assistant Counsel  
Comptroller of the Currency.

(Testimony of W. J. Tobin.)

In compliance with that request (contained in letter) I changed the Wedertz application. I have the original (Lyon County Bank) note with the changed applications. (Objected to on the ground that "the letter does not instruct him to make any change in the application of these amounts which were paid." Admitted subject to objection and "we will consider later what they are worth." No further ruling and no further opportunity to object or except.)

(Further objection by Mr. Sanford: "We would at this time object to any introduction of testimony upon the change in application and change by Mr. Tobin, upon the ground that when he made the application and when the bank made the application, that he is bound by the application as made; that he couldn't revise it; that if he notified the parties of these applications he can't change them after the application has been made." [90])

The Court: "For the present, the objection will be overruled. The document may be admitted and evidence given, subject to the objection." (There was no further ruling and no further opportunity to object or except.)

Exhibit B was admitted in evidence.

(Objection was made by plaintiff to the certificate in the exhibit, viz: "This is to certify that this is a true and correct copy of corrected applications under instructions of the Comptroller of the Cur-

(Testimony of W. J. Tobin.)

rency, December 16, 1936. W. J. Tobin, Receiver, The Reno National Bank.”

The Court: “I think there might be a serious question whether any certificate will be entitled to weight, but we will determine that later.

Additional reason for objection by Counsel for Plaintiff: “That is his interpretation of those instructions and we submit those instructions don’t say that”.

(There was no further ruling and no further opportunity to object or except.)

#### DEFENDANT’S EXHIBIT “B”

\$60,500.00

Reno, Nevada, July 1, 1931

On demand after date, without grace, for value received Lyon County Bank a corporation, promises to pay to

The Reno National Bank

or order, at its banking office in Reno, Nevada the sum of Sixty thousand five hundred 00/100 Dollars in lawful money of the United States, with interest thereon at the rate of eight per cent per annum from date until paid. Interest payable on demand, also after judgment.

The endorsers, sureties, guarantors and assignors, severally waive presentation for payment, protest and notice of protest for non-payment of this note, and all defenses on the ground of any extension of time of its payment

(Testimony of W. J. Tobin.)

that may be given by the holder or holders, to them or either of them, or to the maker thereof. In the event of the non-payment of this said note at maturity, or its collection by suit, this corporation agrees to pay all expenses that may be incurred thereby, including a reasonable attorney's fee, and to that end binds itself, its successors and assigns forever. For the purpose of attachment or levy of execution, this note shall be payable wherever this corporation, or any of its property may be situated, at the option of the holder. [91]

[Seal] In witness whereof, the said corporation has caused this instrument to be executed and its corporate seal to be affixed by its proper officers first thereunto duly authorized.

LYON COUNTY BANK

GEO F. WILLIS

Secretary

By J. I. WILSON

President

No. 5166.

(Testimony of W. J. Tobin.)

(On Back)

	Endorsement on Principal		Balance due on Principal
Philatro & Jones	2-23-1932	\$1000.	\$59,500.
Offset	3- 3-1932	\$ 956.36	\$58,543.64
Sec. Corp coupons	3- 8-1932	\$ 180.00	\$58,363.64
Montelatici	5- 3-1932	\$ 106.65	\$58,256.99
do	6- 1-1932	\$ 106.65	\$58,150.34
Mtg. Sec. Coup	2- 6-1933	\$ 180.00	\$57,970.34
H. E. Carter	2-23-1933	\$3765.56	\$54,204.78
E. S. Wedertz	“ “	\$4919.00	\$49,285.78
L. L. Wedertz	2-27-1933	\$4080.25	\$45,205.53
Montelatici	5-10-33	20.00	45,185.53
Jones	7- 8-33	4481.79	40,703.74

## Endorsement on Interest

12-16-1931	\$2420.00	to 12-31 1931	
6-30-1932	\$ 180.00	on acct Mtg. Sec. Cp	
6-30-1932	\$ 660.	“ “ Walker River Cp.	
7- 2-1932	\$ 660.	“ “ “	
7- 8-1932	\$ 106.65	“ “ Montelatici	
8- 8-1932	\$ 106.65	“ “ “	
8-13-1932	\$ 110.00	“ “ Simpson	
9- 8-1932	\$ 106.65	“ “ Montelatici	
10-14-1932	\$ 106.65	“ “ “	
2-23-1933	\$ 574.44	“ “ H. E. Carter	
2-23-1933	\$ 866.25	“ “ E. S. Wedertz	
2-27-1933	498.00	to 11-5-32 L. L. Wedertz	
“	9.77	on acct.	do

	Endorsement on Principal		Balance due on Principal
Montelatici	4-20-1934	\$ 150.00	\$40,553.74
Philatro & Jones	“ “	\$ 50.00	\$40,503.74
Mtg. Sec. Cp.	11-30-34	1499.23	39,004.51
Montelatici	12-24-1934	\$5000.00	\$34,004.51
Jones	2-19-1935	\$4135.78	\$29,868.73
“	2-25-35	2.45	29,866.28
“	4-19-1935	\$3643.31	\$26,222.97
Yparraguirre	5-31-1935	\$3976.88	\$22,246.09



(Testimony of *W. J. Tobin.*)

Walker Bonds	6-10-35	14306.16	7,939.93
Yparraguirre	6-17-35 (red)	40.79	7,980.72
Koenig	7- 2-1935	456.74	\$ 7,523.98
H. E. Carter	10-24-1935	\$2000.00	\$ 5,523.98
L. L. Wedertz	1- 4-36	3329.75	2,194.23
Jones Comp.	6-16-36	100.00	2,094.23
Carter Wed.	10-21-1936	\$1357.84 on acct	7698.52

**Balance**

9056.36

Carted Wed.	10-21-1936	\$1357.84 on acct	7698.52
“	10-29-1937	\$ 873.05 “	6825.47

[92]

This is to certify that this is a true and correct copy of original note which I hold.

W. J. TOBIN

Receiver, The Reno National Bank

\$60,500.00                      Reno, Nevada, July 1, 1931

On demand after date, without grace for value received Lyon County Bank a corporation, promises to pay to The Reno National Bank or order, at its banking office in Reno, Nevada, the sum of Sixty Thousand Five Hundred 00/100 Dollars in lawful money of the United States, with interest thereon at the rate of eight per cent per annum from date until paid. Interest payable on demand, also after judgment.

The endorsers, sureities, guarantors and assignors, severally waive presentation for payment, protest and notice of protest for non-

(Testimony of W. J. Tobin.)

payment of this note, and all defenses on the ground of any extension of time of its payment that may be given by the holder or holders, to them or either of them, or to the maker thereof. In the event of the non-payment of this said note at maturity, or its collection by suit, this corporation agrees to pay all expenses that may be incurred thereby, including a reasonable attorney's fee, and to that end binds itself, its successors and assigns forever. For the purpose of attachment or levy of execution, this note shall be payable wherever this corporation, or any of its property may be situated, at the option of the holder.

In witness whereof, the said corporation has caused this instrument to be executed and its corporate seal to be hereunto affixed by its proper officers first thereunto duly authorized.

[Seal]

LYON COUNTY BANK

By /s/ J. I. WILSON

President

By s/s GEO. F. WILLIS

Secretary

No. 5166

(Testimony of *W. J. Tobin*.)

(On the back)

Corrected applications under instructions of the  
Comptroller of the Currency December 16, 1936.

	Endorsement on Principal	Balance Due on Principal
2-16-1932	\$ 956.36	\$59,543.64
2-23-32	\$1000.00	\$58,543.64
3- 8-32	\$ 180.00	\$58,363.64
5- 3-32	\$ 106.65	\$58,256.99
6- 1-32	\$ 106.65	\$58,150.34
2-23-33	\$3765.56	\$54,384.78
2-23-33	\$4919.00	\$49,465.78
2-27-33	\$4080.25	\$45,385.53
7- 8-33	\$1947.11	\$43,438.42
11-30-34	989.23	42,449.19
12-24-34	3403.61	39,045.58

	Endorsement on Interest	
12-16-31	\$2420.00	to 12-31 1931
6-30-32	\$ 180.00	on acct
“	\$ 660.	“
7- 2-32	\$ 660.	“
7- 8-32	\$ 106.65	“
8- 8-32	\$ 106.65	“
8-13-32	\$ 110.	“
9- 8-32	\$ 106.65	“
10-14-32	\$ 106.65	“
2-16-33	\$ 180.00	“
2-23-33	574.44	“
“	\$ 866.25	“
2-27-33	507.77	“
5-10-33	20.00	“
7- 8-33	2534.68	7-8-33

Balance forward \$39,045.58

	Endorsement on Interest	Balance Due on Principal
2-19-35	\$2334.82	\$36,710.76
4-19-35	\$3490.92	\$33,219.84
5-31-35	\$1841.01	\$31,378.83
6-10-35	\$14236.42	\$17,142.41

(Testimony of W. J. Tobin.)

7- 2-35	372.94	\$16,769.47
10-24-35	\$1582.70	\$15,186.77
1- 4-36	\$3090.16	\$12,096.61
10-21-36	\$1256.67	\$10,839.94
“	1523.00	9,316.94

**Endorsement on Interest**

4-20-34	\$ 150.00	on acct.
4-26-34	\$ 50.00	“
11-30-34	\$ 510.00	“
12-24-34	\$1596.39	“
2-19-35	\$1800.96	“
2-25-35	\$ 2.45	“
4-19-35	\$ 152.39	“
5-31-35	\$2095.08	to 5-31-35
6-10-35	\$ 69.74	to 6-10-35
7- 2-35	\$ 83.80	to 7- 2-35
10-24-35	\$ 417.30	to 10-24-35
1- 4-36	239.59	to 1- 4-36
1-16-36	100.00	on account
10-21-36	671.40	to 10-21-36

This is to certify that this is a true and correct copy of corrected applications under instructions of the Comptroller of the Currency Dec. 16, 1936.

W. J. TOBIN,

Receiver, The Reno National Bank

Witness resumes. With that new application there is a principal balance due of \$9316.94 and don't show the accrued interest. There is interest due from October 21, 1936 that isn't [94] shown.

I had considerable correspondence with Mr. Blair (Manager of plaintiff corporation) and Mr. Haight, attorney for the Lyon County Bank, reconstructed, or whatever you call it (Lyon County Bank Mortgage Corporation) discussing the matter and the

(Testimony of W. J. Tobin.)

application of the money and how much was due. That discussion started in 1935.

On

Redirect Examination

By Mr. Sanford

witness Tobin testified:

I revised the endorsements and the allocation of the amounts paid upon the original note. As to the subordinate notes or underlying security—the amounts which had been paid on the underlying securities—on the collateral I had left—I made the same reversed the entries. I made the change in the endorsements in these notes I have here—the Yparaguire note and the original Elmer S. Wedertz note. On this other one, where the payment of \$1793 was received, that was made by the Nevada Livestock Production Credit Association with definite instructions to apply it on the principal. It was made that way, so I didn't reverse that. As to the Wedertz note the revision on the principal security contemplated a revision of the allocation on the Wedertz note, but as a matter of fact I did not make the change upon that underlying security. I did not do so pending the outcome of this suit but if it is to be made that way I will have to return that money to the people that advanced it to Wedertz with instructions. If I can't follow their instructions I will undoubtedly have to eliminate the endorsement entirely. I have not notified the Nevada Livestock Production Credit Association of this

(Testimony of W. J. Tobin.)

situation yet, but I have accepted the payment. I notified the Wedertz' prior to the alteration how I had made the credits—advising them that I had made the credits on the principal. Since that time I have not advised them that [95] I changed the credits from principal to dividend between principal and interest.

As to the notes which had been returned to the makers, I didn't receive instructions from the Comptroller until December 16, 1936, and with few exceptions all the notes had been returned to the debtors prior to that time. I did not have to make revisions on the underlying securities, even though they had been returned,—in order to revise the allocations on the primary note. I didn't make any notations because I didn't have them (the papers) but I did do it as something mentally even though I didn't hold the securities at the time and they had passed out of my control.

When these amounts were credited upon the principal of the underlying notes the interest ceased upon those notes to the extent of the amount paid.

In the original application I applied a good deal to interest. I should correct my statement that I applied them all to principal. There were some interest payments made in 1933 that is, endorsed by me (answering questions by Mr. Haight of counsel for Plaintiff).

In order to make the revised applications which I made recently, it was necessary to change the application of the Carter sub-collateral. Under the

(Testimony of W. J. Tobin.)

revised application the last item H. E. Carter (referring to the prepared statement, Plaintiff's Exhibit A in Reply) was \$1625.99 interest due. The balance owing by Carter in order to make the same changes on the sub-collateral as I made on the main obligation, would make H. E. Carter owe \$1625.99 as of October 21, 1936. When I made the final settlement with Carter I returned the note to him. I accepted from Mr. Carter in full settlement of his obligation \$873.05. Under the revised set-up this amount, in order to make our balance \$9316.94, would be \$1625.99. [96]

I wrote the letter to Mr. and Mrs. H. E. Carter October 22, 1936. (Letter offered and received in evidence, Plaintiff's Exhibit 3.)

PLAINTIFF'S EXHIBIT No. 3

Oct. 22, 1936.

H. E. and Roena Carter  
Wellington, Nevada

Dear Sir and Madam:

Re: Lyon County Bank Note.

This is to advise that I have received from the Nevada Livestock Production Credit Association \$1523.00 for application on your indebtedness to this trust.

These funds have been applied as follows:

\$1520.44 on your note dated February 21, 1933 to W. J. Tobin, Receiver, leaving a remaining principal balance due thereon of \$1.00; interest on account of this note \$2.56.

(Testimony of W. J. Tobin.)

After giving effect to these applications your indebtedness to this trust is as follows:

Note #6795 originally to Lyon County Bank Principal balance	\$ 1.00
Accrued interest to Oct. 24, 1935	370.31
Note dated February 21, 1933 to W. J. Tobin, Receiver	
Principal balance	1.00
Accrued interest to Oct. 21, 1936	500.74
	<hr/>
Total	\$873.05

Yours very truly,

WEB:GR

W. J. TOBIN,

Receiver.

c.c. Lyon County Bank

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E. W. BLAIR,

a witness called on behalf of the plaintiff, was sworn and testified as follows:

I am connected with Lyon County Bank Mortgage Corporation, the plaintiff in this case. The plaintiff has part if not all of the files and records of Lyon County Bank. As to the Montelatici note of June 20, 1930, Exhibit for Identification No. 2, I have seen this copy April 1, 1934 in the possession of the Lyon County Bank when I took charge of the Mortgage corporation. I imagine the original note was returned to Montelatici [97] after the matter was cleaned up in our files. The copy



(Testimony of E. W. Blair.)

was retained in the files of Lyon County Bank for the purpose of being informed at all times as to what paper was out. Montelatici was and is a resident of Yerington. The papers were made at the Lyon County Bank and then transmitted to The Reno National Bank. The endorsements of interest on this Exhibit 2 for identification are in the handwriting of George F. Willis, formerly cashier of the Lyon County Bank and after the suspension he was acting under Mr. Seaborn (State Bank Examiner) prior to the formation of the mortgage corporation.

The endorsements show the amounts, date of payment and date paid to the period of time that the interest covered. Later and lower down it shows the endorsements on the principal. One endorsement in the handwriting of Mr. Willis and one endorsement in my own handwriting.

(Plaintiff's Exhibit 2 offered and admitted in evidence—being the same as plaintiff's Exhibit 2 for identification.)

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WALTER BUTLER,

a witness called by the defendant, was sworn and testified as follows:

I am employed, since the summer of 1935, as clerk and bookkeeper, by the receiver of The Reno National Bank. I am familiar with the records in this case—that is the payments on the obligation of the

(Testimony of Walter Butler.)

Lyon County Bank to The Reno National Bank. The note itself shows there was \$58,150.34 principal due at the time Mr. Tobin took possession of the assets of The Reno National Bank. The interest was paid in full to December 31, 1931, and there had been received several amounts on account of interest due subsequent to that date. There were certain collateral securities pledged. The interest on these that accrued and was collected after December 12, 1932 (when Mr. Tobin went in) down to October 21, 1936, totals \$14,658.84.—No—that wasn't interest on collateral securities. On collateral securities it [98] was \$23,118.97. That is the total amount he collected on collateral securities.

After all the payments had been made up to the 21st day of October, 1936, and applying the \$14,658.84 to the payment of interest, and applying the \$956.36 deposit of the Lyon County Bank (a deposit balance on open account), the amount that would have been due on the 21st of October, 1936 on the principal obligation is \$9316.94.

Two payments were made since—one of them held in the trustee account—the other has been endorsed on the original Lyon County Bank note. These are the two payments Mr. Tobin referred to.

(Testimony of Walter Butler.)

(On

Cross Examination

By Mr. Sanford

for the Plaintiff)

That figure of \$14,658.84 as amount of interest accrued and collected from December 12, 1932 down to and including October 21, 1936,—isn't correct. It is, under our revised set-up. That is what we want to do now. The tabulation goes back to February, 1932. (The witness here consults and speaks of a sheet of tabulation which he holds being the same as exhibit "A" in Plaintiff's Reply.)

During that period I applied on the interest the sum of \$5342.90, speaking of the primary obligation, and that includes payments prior to the suspension of The Reno National Bank and clear back to the inception of this loan.

I never made a compilation, split as to the date February 16, 1932 (date of suspension of Lyon County Bank) as to the interest actually accruing on this underlying security after the Lyon County Bank closed February 16, 1932,—or as to interest which accrued after that date and was collected after that date by Mr. Tobin.

I can tell you what was collected and applied according to the original application. [99]

The amount \$23,118.97 I testified to in reply to Mr. Barry (Attorney for Defendant) as being the total amount collected, is the total amount under

(Testimony of Walter Butler.)

the so-called revision. And the \$14,658 was also based on the so-called revision. And the \$9316.94 balance was based on the so-called revision.

(Responding to question by the Court) On the original manner in which the amounts were applied there is a balance due on the Lyon County Bank note, of one dollar principal and \$6825.47 interest,—and on the revised application there is due \$9318.94 and interest from October 21, 1936.

Thereafter the presentation of evidence proceeded no farther.

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Thereafter both sides rested and by order counsel were requested to supply briefs to the court and the complainant filed and served an opening brief, the defendant filed and served an answering brief and the complainant filed and served a reply brief.

In the reply brief the complainant submitted the following points and requests in the conclusion of its brief:

“1. That the Nevada Banking Act of 1911 is paramount and exclusive on the question of allowing or paying any interest on a claim against a closed and insolvent state bank. Counsel has cited no authority in denial of this point and we confidently say he can not.

“That in applying to a claim as for interest the words ‘lien or charge for any payment, advance or clearance thereafter made, or liability

thereafter incurred against any of the assets of the bank' in section 35 of the act (N. C. L. 1929, Sec. 684) clearly refer to a claim or charge as for any interest computed on an obligation from and after February 16, 1932, and they bar and forbid such a claim or any lien or charge therefor. Counsel has reasoned on this matter but the authorities he offers are not in point and they are nullified by the positive authorities cited herein.

“3. That the law not only makes the contract between the lender and the borrower bank, imposing the statutory restrictions upon it, but the contract on which the defendant stands otherwise, must be read in the light of the wording of the collateral [100] security agreements that are exhibits in this case. These are the printed agreements submitted by The Reno National Bank for execution. They are the creditor's own documents and the creditor is bound strictly by them and cannot enlarge the obligation therein defined.

“4. That the accounting by defendant as to the administration of the pledge, the credits applied on collateral paper and the consequent application of collections or avails, to the primary obligation of Lyon County Bank, does not conform to the historical facts; that it is not a faithful accounting; that it represents unnecessary detriment to the Lyon County Bank, pledgor not permitted by the contract, justified

by fair dealing or acquiesced in or ratified by the debtor bank.

“5. That the so-called revision or reapplication of credits is contrary to law, injurious to the debtor bank and not to be tolerated after the fact. ‘As the tree falleth, so let it lie.’

“6. That the defendant ought to be ordered to account to the plaintiff for the overplus it has received and retained and to surrender the securities not yet liquidated and make due amends for any collateral which it has impaired or placed beyond the power of the plaintiff to liquidate.

“7. That the plaintiff ought to have judgment as prayed for, including the delivery of all sums realized during the pendency of this action and voluntarily impounded as it were, and the surrender of all remaining securities and the restoration of any securities cancelled or impaired or equitable accounting for the same, if *if* be found they cannot be restored.

“A. L. HAIGHT

“GEORGE L. SANFORD

“Attorneys for Plaintiff.”

Thereafter without further notice and without notice to the complainant first given the court did on the 16th day of June, 1938 make, sign, enter and cause to be entered and filed, its decision and judgment in the words and figures as follows, to- wit:

[Title of District Court and Cause.]

“OPINION AND DECISION

“Norcross, District Judge:

“The Lyon County Bank, in pursuance of the laws of the States of Nevada relating to banks, on February 16, 1932, was taken over by the State Bank Examiner as an insolvent bank. On December 12, 1932, the Reno National Bank was [101] adjudged to be insolvent by the Comptroller of the Currency and W. J. Tobin was appointed and qualified as Receiver thereof. In pursuance of judgment and decree of the State District Court entered October 26, 1933, in accord with the State banking laws, the State Banking Examiner transferred all property of the said Lyon County Bank to Lyon County Bank Mortgage Corporation, Complainant herein.

“On July 1, 1931, said Lyon County Bank negotiated a loan from said Reno National Bank in the sum of \$60,500.00 and executed a formal note therefor payable ‘on demand \* \* \* with interest thereon at the rate of eight per cent per annum from date until paid. Interest payable on demand, also after judgment.’ The Lyon County Bank also delivered to the Reno National Bank, pledged as collateral security, certain bonds and notes of a total face value in excess of the amount of the loan. At the time the Lyon County Bank was taken over by the State Bank Examiner, it had a deposit

account with the Reno National in the sum of \$956.36, which was later credited upon the note. Defendant's answer alleges that at the time the Reno National Bank was taken over by the receiver there was due as principal on said note the sum of \$59,543.64. By its answer, Defendant admits the collection of \$14,658.84, in the form of interest paid on pledged securities, and the application of such amount to the discharge of claimed accrued interest on the note of the Lyon County Bank. Complainant claims a balance due on principal of said note in the sum of \$9,316.94, together with interest thereon from October 21, 1936. Complainant alleges the total amount due upon principal and interest at the date the Lyon County Bank was taken over by the State Bank Examiner was \$60,148.64; total payments received by Defendant in the sum of \$65,841.90, and, hence, Defendant is indebted to Complainant in the sum of \$4,736.90. Complainant prays judgment in this amount and for return of certain pledged securities and for general relief.

“Questions of law presented upon the facts of this case are whether the amount of indebtedness of the Lyon County Bank to the Reno National Bank is finally determined as the date of insolvency of the Lyon County Bank and its taking over by the State Bank Examiner and thereafter no interest would accrue thereon, which is the contention of Complainant, or whether where such indebtedness is secured



by interest bearing pledges, interest derived therefrom may be applied in discharge of interest which does accrue thereon, which is the contention of Defendant.

“Upon the trial it appeared from exhibits introduced that Defendant had credited payments received upon collateral whether as principal or interest mainly upon the principal of the note and as so indorsed thereon the balance on the principal of [102] the note as of October 21, 1936, was but one (\$1.00) dollar and a balance due on interest as of that date in the sum of \$7,698.52. Following receipt of a letter of date December 16, 1936, from the Executive Assistant Counsel of the Comptroller of the Currency, advising Defendant that—‘Under the rule stated in the case of *Gamble v. Wimberly*, 44 F.(2d) 329, you are entitled to retain the pledged assets and apply toward interest due on your claim after suspension of the Lyon County Bank all income earned upon and collected from the pledged assets after the date of closing of the Lyon County Bank.’—the Defendant made a revision of said previous indorsements resulting in a balance due on principal as of October 21, 1936, of \$9,316.94.

“The securities pledged by the Lyon County Bank consisted of six \$1,000.00, First Lien Coupon Certificates of the Mortgage Security Corporation of America, of January 1, 1941 maturity; Twenty-two \$1,000.00, Walker River Irrigation District First Issue, Series 1, 6%

Bonds, maturity January 1, 1940; Six promissory notes, secured by Mortgages, executed during the years 1930 and 1931, in the total principal amounts of \$67,100.00.

“It is Complainants contention that the Lyon County Bank was not liable for interest upon its said note to the Reno National Bank after the date of its insolvency. Complainant relies on the provisions of sections 35 and 53 of the State Bank Act approved March 22, 1911, Nevada Compiled Laws 1929, Vol. I, section 650 et seq. Section 35 as amended March 2, 1931 reads:

“ ‘No bank official shall give preference to any depositor or creditor by pledging the assets of the bank as collateral security or otherwise; provided, however, that any bank may secure funds deposited with such bank by the United States, state, or counties of the state by pledging acceptable assets of the bank as collateral security; provided further, that any bank may borrow money for temporary purposes, not to exceed the amount of its paid-up capital, and may pledge any of its assets as collateral security therefor; provided further, that when it shall appear that a bank is borrowing habitually for the purpose of conducting its business, the bank examiner may require such bank to pay off such borrowed money. Nothing herein shall prevent any bank from rediscounting in good faith and indorsing any of its negotiable notes.’

“By section 53 it is provided:

“ ‘Whenever it shall appear \* \* \* from any examination or report provided for in this act the examiner shall have reason to conclude that such bank is in an unsafe or unsound condition to transact the business of a bank, or that it [103] is unsafe and inexpedient for such bank to continue in business, the examiner may forthwith take possession of the property and business of such bank and retain such possession until such bank shall resume business or its affairs be finally liquidated as herein provided. No bank, corporation, firm or individual knowing of such taking possession by the examiner, shall have a lien or charge for any payment, advance or clearance thereafter made, or liability thereafter incurred against any of the assets of the bank of whose property and business the examiner shall have taken possession as aforesaid \* \* \*.’ ”

“It is clear from the reading of section 35 that the Lyon County Bank was authorized to negotiate the loan in question and to ‘pledge any of its assets as collateral security therefor’. There is nothing in the provisions of section 53, *supra*, that would affect pledged assets to secure the payment of a note issued in pursuance of the provisions of said section 35. It has been contended that interest accruing upon the note after the insolvency of the Lyon County Bank was a liability ‘thereafter incurred within the

meaning of said section 53.' This contention is without merit as will hereafter appear.

“The State Banking Act of March 24, 1909 made the following provision:

“ ‘Sec. 48. The claims of depositors, for deposits, and claims of holders of exchange shall have priority over all other claims, except federal, state, county and municipal taxes, and subject to such taxes, which at the time of closing of the bank be a first lien on all the assets of the banking corporation from which they are due and thus under receivership; upon proof thereof, they shall be paid immediately out of the available cash in the hands of the receiver. \* \* \*.’ See *Washington-Alaska Bank v. Dexter Horton Nat. Bank*, 263 F. 304, 310.

“The case last cited involved the question whether the *Washington-Alaska Bank* was subject to the banking laws of the State of Nevada, said bank having been organized under the laws of the State of Nevada. The Circuit Court of Appeals of this Circuit held that the banking laws of Nevada were not applicable as the bank was doing business in the Territory of Alaska. So holding, the Court decided the question here presented in favor of the *Dexter Horton National Bank* as follows:

“ ‘A pledge which secures an interest-bearing debt secures the interest as much as the principal of the debt.’ (Citing authorities p. 306).

“Commenting on the case last cited the Circuit Court of Appeals for this Ninth Circuit in *Douglass [104] v. Thurston County*, 86 F.(2d) 899, 910, said:

“ ‘In support of his contention in favor of the allowance of interest after the bank’s insolvency, the treasurer relies upon a single decision—that of *Washington-Alaska Bank v. Dexter Horton Nat. Bank* (C. C. A. 9) 263 F. 304, 306, 307. That case is easily distinguishable from the one at bar. There the national bank was the plaintiff, seeking to foreclose a lien on collateral given by a state bank. The national bank laws dealing with the question of interest, after insolvency, on deposits held by a national bank, were therefore not involved in that suit.’

“In the case of *Gamble v. Wimberly*, 44 F. (2d) 329 the Circuit Court of Appeals for the Fourth Circuit, quoting from syllabus, held:

“ ‘Secured creditor of national bank in liquidating claims can retain interest and dividends accruing on collateral since date of debtor bank’s insolvency (12 U. S. C. A. 194).’

“The contention of Defendant respecting the claimed right to subject the pledged securities to the payment of interest accrued subsequent to the insolvency of the Lyon County Bank also finds support in the following authorities: *Ticonic National Bank v. Sprague*, 303 U. S. ....;

Organ v. Winnemucca State Bank, 55 Nevada 72, 26 P.(2d) 237; 9 C. J. S. 389, 513, 537.

“Judgment for Defendant.

“Dated this 16th day of June, 1938.

“FRANK H. NORCROSS,

“District Judge.”

Thereafter on or about the 2nd day of August, 1938 the defendant filed and served and lodged in said action his proposed findings of fact and conclusions of law and proposed judgment which are in the words and figures following, to-wit:

[Title of District Court and Cause.]

“FINDINGS OF FACT AND CONCLUSIONS OF LAW.

“This matter came on regularly for trial on the 18th day of March, 1938, before the Court without a jury, a jury trial having been duly waived by the parties; George L. Sanford and A. L. Haight appearing as attorneys for the plaintiff, and N. J. Barry appearing as attorney for the defendant. [105]

“From the evidence introduced, the Court finds the facts as follows, to-wit:

“I

“That Lyon County Bank, in pursuance of the laws of the State of Nevada relating to banks, on February 16, 1932, was taken over by the State Bank Examiner as an insolvent bank; that on December 12, 1932, The Reno National Bank was adjudged to be insolvent by the Comptroller of

the Currency, and W. J. Tobin was appointed and qualified as Receiver thereof; that in pursuance of judgment and decree of the State District Court entered October 26, 1933, in accord with the state banking laws, the State Banking Examiner transferred all property of said Lyon County Bank to Lyon County Bank Mortgage Corporation, complainant herein.

“II

“That among the assets of The Reno National Bank, when defendant took possession thereof as Receiver, there was a note of the Lyon County Bank upon which there was then due as principal the sum of \$59,543.64.

“III

“That to secure the payment of said note, said Lyon County Bank had hypothecated to The Reno National Bank certain securities consisting of bonds, and notes secured by mortgage, as security for the payment of said principal obligation.

“IV

“That payments aggregating the sum of \$65,841.90 were received by the defendant and The Reno National Bank since February 16, 1932 on account of the indebtedness upon which a claim had been filed by defendant, and that of said sum, the sum of \$14,658.84 had been collected as interest on said collateral securities accruing after the date of insolvency of said Lyon County Bank.

## “V

“That after applying said sum of \$14,658.84 to the payment of interest due on said primary obligation of the Lyon County Bank to The Reno National Bank up to the 21st day of October, 1936, and the balance remaining after the application of the interest, as aforesaid, on said primary obligation, and after the application of the balance of said sum of \$65,841.90 remaining after deducting the said sum of \$14,658.84 on said principal obligation, as aforesaid, together with the sum of \$956.36, which consisted of a balance due to the credit of the Lyon County Bank in The Reno National Bank, said indebtedness was reduced to the sum of \$9,316.94 on the 21st [106] day of October, 1936.

## “VI

“That in addition to the sums above mentioned, the defendant, on October 29, 1937, collected on the pledged security of H. E. Carter the sum of \$1,625.99, and on October 15, 1937, collected on the pledged security of E. S. Werdertz the sum of \$1,095, leaving a balance of \$6,595.95 owing from plaintiff to defendant; that the interest on the sum of \$9,316.94 from the 21st day of October, 1936 to the 18th day of March, 1938, less deduction of interest on said payments, is the sum of \$838.18, which said sum is now due, owing, unpaid and payable from the plaintiff to the defendant.



“VII

“That no evidence was introduced as to the allegations set forth in what is termed by plaintiff; ‘And for a Defense to said Purported Defense, Counter-Claim and New Matter’, and that therefore there was no evidence upon which to base a finding as to said allegations.

“As Conclusions of Law from the foregoing facts, the Court finds:

“That plaintiff is indebted to the defendant in the sum of \$7,434.13, and that defendant have judgment against the plaintiff in the said sum of \$7,434.13, together with interest at the rate of 8% per annum from the 18th day of March, 1938, and for costs of suit; and

“It is ordered that judgment be entered herein in accordance herewith.

“Dated:

.....,  
District Judge.”

[Title of District Court and Cause.]

“JUDGMENT.

“This cause came on regularly for trial on the 18th day of March, 1938, before the Court without a jury, a jury trial having been duly waived by the parties; George L. Sanford and A. L. Haight appearing as attorneys for the plaintiff, and N. J. Barry appearing as attorney for the defendant.

“Whereupon, witnesses on the part of plaintiff and defendant were duly sworn and ex-

amined, and documentary evidence introduced by the respective parties. The evidence being closed, the cause was submitted to the Court for consideration and decision, and after due [107] deliberation thereon, the Court filed its Findings and Decision in writing and ordered that judgment be entered herein in favor of the defendant in accordance therewith.

“Wherefore, by reason of the law and the findings aforesaid, it is ordered, adjudged and decreed that W. J. Tobin, as Receiver of The Reno National Bank, of Reno, Nevada, a National Banking Association, defendant, do have and recover of and from Lyon County Bank Mortgage Corporation, a corporation, plaintiff, the sum of \$7,434.13, with interest thereon at the rate of 8% per annum from the 18th day of March, 1938, together with defendant’s costs and disbursements incurred in this action amounting to the sum of \$58.44.

**Dated:**

-----,  
 “Judge of the United States District  
 Court for the District of Nevada.”

Thereafter on or about the 11th day of August, 1938 the complainant filed and served its Objection to Proposed Findings of Fact and Conclusions of Law and Judgment and Complainant’s Proposed Findings and Judgment, in the words and figures as follows, to-wit:

[Title of District Court and Cause.]

“Complainant’s Objection to Proposed Findings and Judgment and Complainant’s proposed Findings and Judgment.

“Comes now the complainant, Lyon County Bank Mortgage Corporation, and objects and excepts to the defendant’s proposed findings of fact and conclusions of law and to the proposed formal judgment, heretofore served and filed herein, for the reasons and on the grounds following, to-wit:

“I

“Objects to the recital lines 22 and 23, page 1: ‘From the evidence introduced the court finds the facts as follows, to-wit’ and requests that it may be made to read ‘From the evidence introduced and in consideration of the pleadings and admissions by failing to plead or deny, or otherwise, the court finds the facts as follows:’

“II

“Objects to findings of fact II on the ground that the same is not warranted by the evidence and [108] is contrary to the evidence.

“III

“Objects to the last part of finding of fact IV, to-wit: ‘and that of said sum the sum of \$14,658.84 had been collected as interest on said collateral securities accruing after the date of insolvency of said Lyon County Bank’ on the ground that the same is not warranted by the evidence and is contrary to the evidence.

## “IV

“Objects to finding of fact V on the ground that the same is not warranted by the evidence and is contrary to the evidence.

## “V

“Objects to finding of fact VI on the ground that the same is not warranted by the evidence and is contrary to the evidence.

## “VI

“Objects to finding of fact VII on the ground that the reply of complainant sets up facts constituting a defense and plea of estoppel and alleges matters with respect to the allegations of the counterclaim in the defendant’s answer. That substantial evidence was introduced in support thereof by the complainant as set forth in complainant’s requested findings.

## “VII

“Objects to the proposed conclusions of law on the ground that they are not made from any valid findings of fact and are not based on fact or law.

## “VIII

“Objects to the proposed formal judgment on the ground that it is not based on any valid findings of fact or conclusions of law and that it is against the facts and against the law.

“Complainant herewith files the annexed proposed findings of fact and conclusions of law and proposed judgment and requests the court

to approve, adopt, sign, file, and cause to be entered and filed, the same, but after hearing, however, and requests that these matters may be heard and determined by the court after ten days' notice to the defendant by mail by mailing a copy of these objections and proposed findings and judgment together with a copy of the order setting a day for hearing thereon, to the defendant's attorney, Norman Barry, Esq., Reno, Nevada, and complainant requests that after hearing the court may reject the findings objected to and the judgment objected to and may adopt, sign, and [109] enter the findings and judgment proposed, in lieu thereof.

“Dated the 10th day of August, 1938.

“A. L. HAIGHT and

“GEORGE L. SANFORD,

“Attorneys for Complainant.”

[Title of District Court and Cause.]

“COMPLAINANT'S PROPOSED FINDINGS AND PROPOSED JUDGMENT.

“This matter came on regularly for trial on the 18th day of March, 1938, before the court, without a jury, a jury trial having been duly waived by the parties; George L. Sanford, Esq., and A. L. Haight, Esq., appearing as attorneys for the complainant, and N. J. Barry, Esq., appearing as attorney for the defendant.

“From the evidence introduced and in consideration of the pleadings and admissions by

failing to plead, reply, deny or otherwise, the court finds the facts as follows:

“I

“That Lyon County Bank, in pursuance of the laws of the State of Nevada relating to banks, on February 16, 1932, was taken over by the State Bank Examiner as an insolvent bank; that on December 12, 1932, The Reno National Bank was adjudged to be insolvent by the Comptroller of the Currency, and W. J. Tobin was appointed and qualified as Receiver thereof; that in pursuance of judgment and decree of the State District Court entered October 26, 1933, in accord with the state banking laws, the State Banking Examiner transferred all property of said Lyon County Bank to Lyon County Bank Mortgage Corporation, complainant herein.

“II

“That on February 16th, 1932, when the said Lyon County Bank was declared insolvent and was taken over by the state bank examiner, The Reno National Bank held and owned a demand note of Lyon County Bank dated July 1, 1931, for \$60,500., with interest at 8% per annum; interest paid to January 1, 1932. That on said February 16th, 1932, the said Lyon County Bank had on deposit with said The Reno National Bank the sum of \$956.36; that on February 16, 1932, there was due and unpaid upon said note the sum of \$60,500. principal and \$605. interest, making a total of \$61,105; that the said

The Reno National Bank offset the said \$956.36 against the said principal obligation, leaving a balance of \$59,543.64 principal, and unpaid interest on said note from January 1st, 1932; That between February 16, 1932, [110] and June 2, 1932, The Reno National Bank applied upon the said note from avails collected of securities held by it the further sum of \$1393.30; applying the same upon the principal of the note; that on September 1, 1932, The Reno National Bank filed a claim against the insolvent, Lyon County Bank, for the sum of \$58,150.34 principal on note, together with interest.

### “III

“The Lyon County Bank on July 22, 1931, hypothecated to The Reno National Bank certain securities consisting of bonds, and notes secured by mortgages as security for the payment of all the indebtedness of Lyon County Bank to The Reno National Bank existing on the last-mentioned date, as well as all the future indebtedness to the said The Reno National Bank which the Lyon County Bank might thereafter incur. It was then and there agreed and contemplated by and between the parties that said security would be for the payment of whatever of principal or interest was then and there due, and also for the payment of whatever obligations by way of interest or otherwise that should be incurred after July 22, 1931. It was then and there agreed and understood in said agreements that any interest computed for any

period after July 22, 1931, would be considered a liability of Lyon County Bank incurred in such period. That at the time said promissory note of \$60,500. was given and at the time said collateral security agreements were made the Nevada Banking Act of 1911 and Sections 35, 53, and 72 thereof, and all of said act was in full force and effect.

“That no indebtedness to The Reno National Bank was incurred and owing by the Lyon County Bank after July 22, 1931, from that time until February 16, 1932 (other than the principal sum in said promissory note amounting to \$60,500.) except interest on said principal sum computed from January 1, 1932, to February 16, 1932, amounting to \$605.

#### “IV

“Payments aggregating \$65,841.90 were received by The Reno National Bank and the defendants as avails and proceeds from the said collaterals and securities, including a collection of \$956.36 of a credit balance of Lyon County Bank standing on open account and including other sums, in the period from February 16, 1932, to and including October 21, 1936. Said collections were in excess of the claim of The Reno National Bank and the excess was \$4736.90. Said collections of \$5182.92 included \$2142.17 collected prior to February 16, 1932, and \$110. of said reported collections was not a collection of any interest [111] or avails or proceeds from collaterals. Interest accrued and was



collected and retained by the said bank and defendant, being avails and proceeds from the said collaterals and securities covering the period from February 16, 1932, to and including October 21, 1936, in the total amount of \$2930.75 as follows, to-wit:

“June 30, 1932, Mortgage Security Corporation		
bond coupons,		\$ 134.00
July 2nd, 1932, Walker River Irrigation		
District bond coupons,		498.67
Feb. 6, 1933, Mortgage Security Corporation		
bond coupon,		180.00
Feb. 23, 1933, H. E. Carter, interest on loan,		446.11
Feb. 23, 1933, E. S. Wedertz, “ “ “		640.75
Feb. 27, 1933, L. L. Wedertz, “ “ “		406.66
Jan. 1, 1936, L. L. Wedertz, “ “ “		622.00
Oct. 21, 1936, H. E. Carter, “ “ “		2.56
		<hr/>
		\$2,930.75

“V.

“That The Reno National Bank and the defendant collected \$65,841.90 in the period February 16, 1932, to October 21, 1936. The claim of The Reno National Bank on February 16, 1932, the date of insolvency and taking over by the state bank examiner, was \$60,148.64 and never increased thereafter. The Reno National Bank and the defendant collected and retains \$4736.90 more than the amount of its claim against the Lyon County Bank or its insolvent estate or complainant and also withholds certain securities and collaterals.

## “VI.

“That on October 21, 1936, The Reno National Bank and the defendant retained the said excess of \$4736.90 and did not surrender the following collaterals delivered to it, to-wit:

“Notes of H. E. and Rowena Carter for \$5500., dated May 1, 1931, and for \$1788. dated February 21, 1933, representing a balance due Lyon County Bank and complainant of \$873.05;

“Notes of Elmer H. and Cora Wedertz for \$7300., dated February 27, 1931, and for \$1794., dated February 21, 1933, representing a balance due Lyon County Bank and complainant of \$3471.05 and in addition interest of 8% on \$2245.93 thereof after October 21, 1936, to November 15, 1937, and upon \$1150.93 from and after November 15, 1937, all at the rate of 8% per annum.

“On October 29, 1937, defendant collected from H. E. Carter \$873.05, purporting to be the balance on the Carter notes of \$5500. and \$1788. This sum has been held by defendant since October 29, 1937, and is due to complainant.

“On November 15, 1937, after suit began the de- [112] fendant collected \$1095. on the Elmer S. Wedertz obligations and has retained and holds the same and the same is due to complainant.

“The defendant has returned and surrendered the H. E. Carter notes to the original obligors and the complainant is prevented from recover-

ing more than the said sum of \$873.05, although defendant now claims that more is due thereon.

“VII.

“The defendant is indebted and accountable to the complainant in the following sums:

“1. In the sum of \$4736.90.

“2. In the sum of \$1095.00 on the Wedertz collections and amounts due on such collaterals; also the Wedertz notes amounting to \$2296.90 or thereabouts, plus accrued interest from October 21, 1936.

“3. In the sum of \$873.05 on the Carter collection.

“That all sums are due and accountable as of October 21, 1936, and as they accrued and were collected and retained.

“VIII.

“That the defendant in the year 1937, stated the account in writing to the complainant as shown by Exhibit A annexed to complainant's reply and it appears therefrom and from the evidence and the court finds that The Reno National Bank and the defendant collected moneys which were avails and proceeds from the said collaterals and endorsed and recorded a record of the same on the said collateral paper and on the promissory note paper of Lyon County Bank. Thereafter the defendant changed or purported to change the said endorsement and record on the said collateral paper and on the

promissory note paper of the Lyon County Bank, without the consent of the said original obligors of the Lyon County Bank or complainant. That the Lyon County Bank upon insolvency February 16, 1932, was unable to pay its creditors and depositors in full and was unable to pay its creditors and depositors in full out of its assets, and has not been able to do so thereafter out of any assets, recoveries or earnings, or at all. That said change in the endorsements and records of collections made by the defendant as above recited was and is a detriment to Lyon County Bank and complainant and deprived said bank and complainant of sums and paper on which it might have realized after discharging all its existing obligations to The Reno National Bank.

“As conclusions of law from the foregoing facts the Court finds:

“The defendant, as receiver of The Reno National [113] Bank is indebted to the complainant in the following sums: \$4736.90; \$1095; \$873.05; \$2246.90, or the total sum of \$6704.95 and should surrender the said Wedertz notes to the complainant.

“That in the event the said Wedertz notes are not surrendered or cannot be surrendered the defendant is indebted to the complainant and should be required to pay the said sum of \$6704.95 and interest on \$2245.93 from October 21, 1936, to November 15, 1937, and interest on \$1150.93 from November 15, 1937, to date of

trial, to-wit, March 18, 1938, and until paid, all at the rate of 8% per annum.

“Ordered that judgment be entered herein in accordance herewith.

“Dated ....., 1938.

“.....

“District Judge.”

[Title of District Court and Cause.]

“JUDGMENT

“This cause came on regularly for trial on the 18th day of March, 1938, before the Court without a jury, a jury trial having been duly waived by the parties; George L. Sanford, Esq., and A. L. Haight, Esq., appearing as attorneys for the plaintiff, and N. J. Barry, Esq., appearing as attorney for the defendant.

“Whereupon, witnesses on the part of plaintiff and defendant were duly sworn and examined, and documentary evidence introduced by the respective parties. The evidence being closed, the cause was submitted to the court for consideration and decision, and after due deliberation thereon, the court filed its Findings and Decision in writing and ordered that judgment be entered herein in favor of the complainant in accordance therewith.

“Wherefore, by reason of the law and the findings aforesaid

“It is ordered, adjudged and decreed that Lyon County Bank Mortgage Corporation, a

corporation, complainant, do have and recover of and from W. J. Tobin as receiver of The Reno National Bank of Reno, Nevada, a national banking association, defendant, the judgment of this court as follows, to-wit:

“For the sum of \$6704.95 and interest on the same from October 21, 1936, at 8% per annum, and for the return of the notes of E. S. and Cora Wedertz, dated February 27, 1931, in the sum of [114] \$7300. and dated February 21, 1933, in the sum of \$1794.

“In the event said notes cannot be returned or surrendered by the defendant to the complainant then said judgment shall be and is hereby awarded to the complainant against the defendant in the said sum of \$6704.96 and interest as aforesaid, and the further sum being the interest on \$2245.93 from October 21, 1936, to November 15, 1937, and the interest on \$1150.93 from November 15, 1937, to March 18, 1938, and said interest shall continue until paid, all at the rate of 8% per annum.

“That the complainant have judgment for the further sum of its costs and disbursements incurred in this action amounting to the sum of \$.....

“Dated ....., 1938.

.....  
 “Judge of the United States  
 District Court for the Dis-  
 trict of Nevada.”

On August 10, 1938, the Court signed the findings proposed by the defendant and signed and entered the judgment proposed by the defendant and the same were filed and entered by the clerk.

Thereafter such proceedings were duly and regularly had that on the 2nd day of September, 1938, the above-entitled court entered an order and minute order in the words and figures following, to-wit:

“Ordered that the findings of fact and conclusions of law and judgment made and entered on the 10th day of August, 1938, be, and the same hereby are, set aside as having been inadvertently made and entered, and it is further ordered that defendant’s proposed findings of fact, conclusions of law and form of judgment, lodged with the Court on August 2, 1938, and plaintiff’s objections to defendant’s proposed findings and judgment and plaintiff’s proposed findings and judgment, filed August 11th, 1938, stand as submitted to the Court for consideration and decision.”

Thereafter such proceedings were duly and regularly had that on the 8th day of September, 1938, the court entered an [115] order confirming the aforesaid order made and entered September 2, 1938 and signed and filed findings of fact and conclusions of law and entered and caused to be entered judgment in said action and granted an exception to any changes with respect to the findings of fact proposed by plaintiff or any failure to include such

proposed findings and also an exception to the denial by the court of a request by plaintiff for the entry of judgment in favor of plaintiff.

The said findings of fact and conclusions of law and judgment signed, filed and entered and caused to be entered by the court are in the words and figures following, to-wit:

(The same are not copied herein but are a part of the judgment roll and record and are referred to herein.)

Thereafter as of September 8, 1938 the complainant filed and on September 14, 1938 served its objections, which were filed September 14, 1938, which objections are in the words and figures following, to-wit:

[Title of District Court and Cause.]

“COMPLAINANT’S OBJECTIONS

“Comes now the complainant above-named and presents in writing its objections made to the court before the entry of formal judgment in this action and objects as follows:

“I.

“Objects to the Court’s finding of fact V in the last three lines thereof, to-wit:

“‘\* \* \* and that of said sum, the sum of \$14,658.84 had been collected as interest on said collateral securities accruing after the date of insolvency of said Lyon County Bank.’



on the ground that the same is not supported by any substantial evidence but is contrary to the evidence and the evidence shows and finding of fact IV finds that the sum of only \$2930.75 was interest-avails of said collaterals in said period. [116]

“II.

“Objects to the court’s finding of fact VI on the ground that the same is not supported by any substantial evidence but is contrary to the evidence and there is no evidence to show that the said sum of \$14,658.84 or any sum other than \$2930.75 referred to was the avails of interest on collaterals applied on said primary obligation or at all, during said period or at all, or that after making the credits and deductions recited in said finding, or at all, the indebtedness of Lyon County Bank to The Reno National Bank was reduced to the sum of \$9316.94 on the 21st day of October, 1936 or on any day or as of any day.

“III.

“Respecting the court’s finding of fact VII, objects that the same is not supported by any substantial evidence but is contrary to the evidence insofar as it purports to state that by reason of the premises there was a balance of \$6595.96 due from Lyon County Bank to The Reno National Bank by reason of the premises and the collections on the Carter and Wed-

“ \* \* \* No bank, corporation, firm or individual, knowing of such taking possession by the examiner, shall have a lien or charge for any payment, advance or clearance thereafter made, or liability thereafter incurred against any of the assets of the bank of whose property and business the examiner shall have taken possession as aforesaid. \* \* \*

no interest was chargeable or payable and no lien for interest was allowable, computed on the principal indebtedness as it existed on the day of insolvency, taking over and notice, respecting Lyon County Bank, as aforesaid. And no such interest or lien was payable or allowable because of the collateral-security agreements in evidence in this case which were entered into in contemplation of the provisions of said quoted statute.

“Objecting further complainant objects to the action of the court insofar as in its findings of fact and conclusions of law it has overruled and disregarded the objections heretofore made by complainant on August 11, 1938 to the proposed findings of fact, conclusions of law and judgment lodged and filed by defendant August 2, 1938, and insofar as it has rejected the proposed findings of fact, conclusions of law and judgment filed and submitted to the court on the 11th day of August, 1938.

“Objecting and specifying further complainant [118] objects to the action of the court insofar as it has in its findings of fact and conclusions of law and judgment proposed to be signed and entered, adopted the findings of fact and conclusions of law proposed by the defendant August 2, 1938 and particularly defendant’s proposed findings of fact IV and V (which are the court’s findings of fact V and VI) and defendant’s proposed finding of fact VI (which is the court’s finding of fact VII) and these objections are made on the grounds set forth in the complainant’s objections to the defendant’s proposed findings of fact and conclusions of law.

“And complainant objecting further objects to the omission from the findings of fact and conclusions of law by the court of that part of proposed finding of fact III reading as follows:

“ ‘It was then and there agreed and contemplated by and between the parties that said security would be for the payment of whatever of principal or interest was then and there due, and also for the payment of whatever obligations by way of interest or otherwise that should be incurred after July 22, 1931. It was then and there agreed and understood in said agreements that any interest computed for any period after July 22, 1931, would be considered a liability of Lyon County Bank incurred in such period.’

“And also that part reading as follows:

“‘That no indebtedness to Reno National Bank was incurred and owing by the Lyon County Bank after July 22, 1931, from that time until February 16, 1932 (other than the principal sum in said promissory note amounting to \$60,500.) except interest on said principal sum computed from January 1, 1932 to February 16, 1932, amounting to \$605.’

and also the omission of complainant’s proposed findings of fact VI, VII and VIII, which were proposed by complainant August 11, 1938.

“And Complainant asks that these objections be noted and that in the event they or any of them be overruled that they may have without further request, an exception noted in the record of this action.

“Dated September 8, 1938.

“A. L. HAIGHT

“GEORGE L. SANFORD

Attorneys for Complainant.’

“Received a copy of the foregoing Complainant’s Objections this 15th day of September, 1938.

“N. J. BARRY

“Attorney and Solicitor for  
Defendant W. J. Tobin  
etc.” [119]

Thereafter on the 14th day of September, 1938 the Complainant duly filed and served its petition for allowance of appeal and its Assignment of Errors and on the same day the court duly and regularly allowed said appeal and fixed a cost bond therefor and ordered that a certified transcript of the record, proceedings and documents on which the said judgment was made be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, and ordered that the time for filing and serving complainant's bill of exceptions and complainant's praecipe to the clerk for copies of the record and the time for service of all citations be enlarged and extended to and including the 17th day of October, 1938.

And on the same day the court duly and regularly ordered that jurisdiction of the said action and the judgment term of the court be reserved and continued into and through the October, 1938 term of said court for all purposes connected with the said action.

And on the same day the complainant duly made and executed and caused to be executed its cost bond on appeal in the sum of \$300, which was on that day duly approved and accepted by said court.

And on the same day citation on appeal was duly signed and regularly issued out of said court directed to the said defendant.

And on the same day the said Complainant's objections, Complainant's petition for allowance of appeal, Complainant's assignment of errors, Order

allowing appeal, fixing bond and extending time. Order reserving jurisdiction, cost bond on appeal and citation on appeal were duly and regularly served on the defendant, who acknowledged receipt on the face of the original papers and acknowledged receipt of true copies thereof delivered to him, and said original papers were re-delivered to the Clerk [120] of this court and said citation on appeal was returned and filed in this court, the last-named filing being the filing of the citation on appeal which was filed September 16, 1938.

Be it further remembered that the complainant has objected to the action of the court as aforesaid and objects to the action of the court as aforesaid and excepts as aforesaid and is deemed to object and except thereto.

And now in furtherance of justice and that right may be done, the complainant presents the foregoing as and for its bill of exceptions and statement of the evidence, in the above-entitled action and prays that the same may be settled, allowed, signed and filed as such.

A. L. HAIGHT

GEORGE L. SANFORD

Attorneys for Complainant

The undersigned N. J. Barry, for and on behalf of W. J. Tobin, as Receiver of The Reno National Bank of Reno, Nevada, a National Banking Association, Defendant in the above-entitled action, does hereby acknowledge the service on the 7th day of

October, 1938, of the above and foregoing bill of exceptions and statement of the evidence this 7th day of October, 1938, and, having examined the same, does agree that the same is true and correct and embraces all the evidence material to the issues relating to the point or points involved, and that the same may be allowed, settled, signed and filed and made part of the record in said action, and does hereby waive the right to be present at the settling and allowance of said bill of exceptions and statement of the evidence aforesaid.

N. J. BARRY

Attorney for Defendant [121]

And thereupon, on the 8th day of October, 1938, upon due notice to the said defendant and within the time limited and granted by the court therefor, and within the term of court in which said decision and judgment were made, signed, filed and entered, the foregoing bill of exceptions and statement of the evidence is duly tendered by the said Complainant for signing, settlement and allowance as the bill of exceptions in said cause, and the said complainant and defendant having agreed that the same is true and correct and that the testimony and evidence therein has been correctly set forth and summarized and condensed in narrative form;

It is ordered that the above and foregoing be and the same is herewith duly signed, certified and allowed as the bill of exceptions and statement of evidence in said cause, and as being true and cor-

rect, and the same is hereby made a part of the record in said cause and ordered to be filed as such.

FRANK H. NORCROSS

District Judge,

Trial Judge in said Cause.

Service, by copy of the foregoing Complainant and Appellant's Bill of Exceptions and Statement of the Evidence, is hereby admitted this 1st day of October, 1938.

N. J. BARRY

Attorney for Defendant

[Endorsed]: Filed Oct. 8, 1938. [122]

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[Title of District Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF THE  
RECORD.

To the Clerk of the Above Entitled Court:

You are requested to prepare and certify a transcript of record in the above entitled action to be filed in the United States Circuit Court of Appeals for the Ninth Circuit pursuant to an appeal allowed therein and include in such transcript of record the following, to-wit:

1. The complaint.
2. The answer.
3. The reply.
4. The opinion and decision and judgment of Hon. Frank H. Norcross, Judge of the above en-



titled court, signed, dated, filed, and entered the 16th day of June, 1938.

5. All notations of entry of judgment in the minutes, docket or judgment book of the clerk respecting the judgment of [123] June 16, 1938.

6. The findings of fact, conclusions of law, and judgment signed, dated, filed, and entered the 10th day of August, 1938.

7. All notations of entry of judgment in the minutes, docket, or judgment book of the clerk, respecting the judgment of August 10, 1938.

8. The minute entries or entries of orders and order or orders given, made and entered the 2nd day of September, 1938, setting aside previous acts and submitting all matters for further consideration.

9. The findings of fact, conclusions of law, and judgment made, signed, dated, filed, and entered the 8th day of September, 1938.

10. The minute order of court entered and noted by the clerk to effect that "if either party should desire any additional form of exceptions they may be called to the attention of the court and entered at any time." Said order having been announced September 8, 1938, in open court.

11. Petition for allowance of appeal filed September 14, 1938.

12. Assignment of errors on appeal filed September 14, 1938.

13. Order allowing appeal, fixing bond and extending time, signed and filed September 14, 1938.

14. Order reserving jurisdiction and extending time, signed and filed the 14th day of September, 1938.

15. Cost bond on appeal made, signed and executed the 14th day of September, 1938, and approved by order at the foot, all dated, signed, issued and filed the 14th day of September, 1938.

16. Citation on appeal issued, dated, signed the 14th day of September, 1938, and returned and filed the 16th day of September, 1938.

17. Affidavit and proof of service of complainant's [124] objections, complainant's petition for allowance of appeal, complainant's assignment of errors, order allowing appeal, fixing bond and extending time, order reserving jurisdiction, cost bond on appeal, and citation on appeal, said affidavit being sworn to the 16th day of September, 1938, and filed the 16th day of September, 1938.

18. Bill of exceptions or bills of exceptions filed or to be filed herein, and including the order of court settling the same.

19. Copies of original exhibits of plaintiff No.'s 1, 2, and 3; defendant's exhibits A and B.

20. The praecipe with proof and acknowledgment of service thereof.

Dated this 29th day of September, 1938.

A. L. HAIGHT and  
GEORGE L. SANFORD,  
Attorneys for Complainant.

Service by copy of the foregoing praecipe for transcript of record the 1st day of Oct., 1938, is admitted this 1st day of Oct., 1938.

N. J. BARRY,  
Attorney for Defendant.

[Endorsed]: Filed Sept. 30, 1938. [125]

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PLAINTIFF'S EXHIBIT NO. 1.

COPY

\$60,500.00

Reno, Nevada, July 1, 1931

On Demand after date, without grace, for value received, Lyon County Bank a corporation, promises to pay to The Reno National Bank or order, at its banking office in Reno, Nevada, The sum of Sixty Thousand Five Hundred 00/100 Dollars in lawful money of the United States, with interest thereon at the rate of eight per cent per annum from date until paid. Interest payable on Demand, also after judgment.

The endorsers, sureties, guarantors and assignors, severally waive presentation for payment, protest and notice of protest for non-payment of this note, and all defenses on the ground of any extension of time of its payment that may be given by the holder or holders to them or either of them, or to the maker thereof. In the event of the non-payment of this said note at maturity, or its collection by suit, this

corporation agrees to pay all expenses that may be incurred thereby, including a reasonable attorney's fee, and to that end binds itself, its successors and assigns forever. For the purpose of attachment or levy of execution, this note shall be payable wherever this corporation, or any of its property may be situated, at the option of the holder.

[Seal] In witness whereof, the said corporation has caused this instrument to be executed and its corporate seal to be hereunto affixed by its proper officers first thereunto duly authorized.

LYON COUNTY BANK

By J. I. WILSON

President.

By GEO F. WILLIS,

Secretary.

No. 5166.

Form 188

(Attached to Pltff's. Ex. 1)

<u>Endorsements on Principal</u>		
<u>Date</u>	<u>Amount</u>	<u>Bal. due on Prin.</u>
2-23-32	\$ 1,000.	\$59,500.00
3- 3-32	956.36	58,543.64
3- 8-32	180.00	58,363.64
5- 3-32	106.65	58,256.99
6- 1-32	106.65	58,150.34
2- 6-33	180.00	57,970.34
2-23-33	3,765.56	54,204.78
2-23-33	4,919.00	49,285.78
2-27-33	4,080.25	45,205.53

5-10-33	20.00	45,185.53
7- 8-33	4,481.79	40,703.74
4-20-34	150.00	40,553.74
4-20-34	50.00	40,503.74
11-30-34	1,499.23	39,004.51
12-24-34	5,000.00	34,004.51
2-19-35	4,135.78	29,868.73
2-25-35	2.45	29,866.28
4-19-35	3,643.31	26,222.97
5-31-35	3,976.88	22,246.09
6-10-35	14,306.16	7,939.93
6-17-35 (Red ink)	40.79	7,980.72
7- 2-35	456.74	7,523.98
10-24-35	2,000.00	5,523.98
1- 4-36	3,329.75	2,194.23
6-16-36	100.00	2,094.23
10-21-36	2,093.23	1.00

Endorsements on Interest

12-16-31	2,420.00	to 12-31-31
6-30-32	180.00	on acct.
6-30-32	660.00	"
7- 2-32	660.00	"
7- 8-32	106.65	"
8- 8-32	106.65	"
8-13-32	110.00	"
9- 8-32	106.65	"
10-14-32	106.65	"
2-23-33	574.44	"
2-23-33	866.25	"
2-27-33	498.00	to 11-5-32
2-27-33	9.77	on acct.
10-21-36	Balance due on Interest	\$9,056.36
10-21-36	1,357.84	on Acct.
Balance due on Interest		7,698.52

Clerk's Endorsement

No. 2721. U. S. Dist. Court, District of Nevada.  
 Plff's Exhibit No. 1. Filed Mar. 18th, 1938. O. E.  
 Benham, Clerk. By ....., Deputy. [126]

## PLAINTIFF'S EXHIBIT 2.

\$8000.00          Yerington, Nevada, June 20, 1930

Fifteen months after date without grace, for value received, we, jointly and severally promise to pay to Lyon County Bank or order in Yerington, Nevada, the sum of Eight Thousand Dollars in U. S. gold coin with interest thereon at the rate of eight per cent per annum from date until paid. Interest payable semi-annually also after judgment.

The endorsers, sureties, guarantors and assignors, severally waive presentation for payment, protest and notice of protest, for non-payment of this note and all defenses on the ground of any extension of time of its payment that may be given by the holder or holders, to them or either of them, or to the maker or makers thereof. In the event of the non-payment of this said note at maturity, or its collection by litigation, we jointly and severally agree to pay all expenses that may be incurred thereby, including attorney's fee, and to that end bind ourselves, heirs, executors, administrators and assigns forever. For the purpose of attachment or levy of execution, this note

shall be payable wherever we may be situated at the option of the holder.

Signed NARCISO MONTELATICI  
 CONCETTA MONTELATICI  
 EUGENE MONTELATICI

Rediscounted with Reno  
 National Bank  
 No. 6539

Endorsement of the above as follows: "Paid Renewed 12/31/34 Lyon County Bank, Yerington, Nevada". Also "Paid Lyon County Bank, Yerington, Nevada".

	Payments	
Date	Interest	Principal Balance

Name Narciso Montelatici, Concetta Montelatici, and Eugene Montelatici.

No. 6539 Date 6/20/30 Amount \$8000.00

When due 15 mos. Interest, 8%

Endorsers or collateral Real and Chattel Mtg. on Hotel Patricia

Approved GFW JIW

Notice sent [127]

(ENDORSEMENT ON BACK)

Endorsement on Interest

May 3-32	\$106.65	to Aug 20 1930
June 1-32	\$106.65	to Sept 20 1930
July 8 1932	\$106.65	to Dec 20 1930
Aug 8 1932	\$106.65	to Feby 20 1931
Sept 8 1932	\$110.65	to Apr 20 1931
Oct 14 1932	\$106.64	to June 20 1931

	<u>Endorsement on Principal</u>	<u>Balance Due on</u> <u>Principal</u>
May 10 1933	\$20	\$7980.00
Apr 20 1934	\$150-	\$7830.
Insurance premium collected by Reno National—Not endorsed		

“Paid” in green pencil written  
across last two items.

### Clerk's Office Endorsement

No. 2721. U. S. Dist. Court, District of Nevada.  
Plff's Exhibit No. 2. Filed Mar. 18th, 1938. O. E.  
Benham, Clerk, By ..... Deputy. [128]

### PLAINTIFF'S EXHIBIT No. 3

Oct. 22, 1936.

H. E. and Roena Carter  
Wellington, Nevada

Dear Sir and Madam:

Re: Lyon County Bank Note.

This is to advise that I have received from the Nevada Livestock Production Credit Association \$1523.00 for application on your indebtedness to this trust.

These funds have been applied as follows:

\$1520.44 on your note dated February 21, 1933 to W. J. Tobin, Receiver, leaving a remaining principal balance due thereon of \$1.00; interest on account of this note \$2.56.



After giving effect to these applications your indebtedness to this trust is as follows:

Note #6795 originally to the Lyon County	
Bank Principal balance	\$ 1.00
Accrued interest to Oct. 24, 1935	370.31
Note dated February 21, 1933 to W.	
J. Tobin, Receiver	
Principal balance	1.00
Accrued interest to Oct. 21, 1936	500.74
	<hr/>
Total	\$873.05

Yours very truly,

WEB:GR

W. J. TOBIN,  
Receiver.

c.c. Lyon County Bank

Clerk's Endorsement

No. 2721. U. S. Dist. Court, District of Nevada.  
Plff's Exhibit No. 3. Filed Mar. 18th, 1938. O. E.  
Benham, Clerk. By ....., Deputy. [129]

## DEFENDANT'S EXHIBIT "A"

Treasury Department  
Comptroller of the Currency  
Washington

December 16, 1936

Mr. Walter J. Tobin, Receiver  
The Reno National Bank  
Reno, Nevada.

REFER CC-LD

Dear Sir:

This will acknowledge receipt of your letter of December 7, 1936 with enclosures referring to your Asset No. 552 representing a bills payable obligation due the Reno National Bank by the Lyon County Bank, now insolvent. You have enclosed a letter from the attorney representing the Lyon County Mortgage Corporation, liquidating Agent for the Lyon County Bank, taking exception to your position that you are entitled to payment in full of Asset No. 552 including interest up to the date of payment in full. You advise that there is now due your trust on Asset No. 552 the sum of \$1.00 representing the principal amount due and \$7698.52 representing the amount still due in the way of interest.

It is our understanding that you have applied from the collections made on the pledged assets representing both principal and income collections an amount sufficient to pay the bills

payable obligation with the exception of \$1.00 due in the principal amount of the obligation and the amount you claim still to be due in the way of interest. It is also our understanding that the amount so applied by you represents not only collections made on the principal amounts due on the pledged assets but also collections made from these pledged assets which consist of income or interest accrued upon the assets after the date of closing of the Lyon County Bank. Under the rule stated in the case of *Gamble v. Wimberly*, 44 F.(2) 329, you are entitled to retain the pledged assets and apply toward interest due on your claim after suspension of the Lyon County Bank all income earned upon and collected from the pledged assets after the date of closing of the Lyon County Bank. It appears therefore that a portion of the collections made by you and applied toward payment of the principal amount due on the bills payable obligation represented in fact income or interest earned upon the pledged assets after the date of closing of the Lyon County Bank. If this is true, you should have applied toward the interest due on your bills payable obligation the income accrued upon and collected from the pledged assets after the date of closing of the Lyon County Bank. Such an application would have reduced the amount of interest still due on the bills payable obligation and increased the amount of principal still due

on this obligation, permitting you to receive on your claim against the Lyon County Bank dividends, under the rule stated by the Supreme Court in the cases of *Merrill v. National Bank*, 173 U. S. 131; 43 L. Ed. 640 and *Aldrich v. Chemical National Bank*, 176 U. S. 618; 44 L. Ed. 611 until the payment of dividends from the Lyon County Bank due on your claim and the collections made from the principal amount of the pledged assets would pay in full your claim. You are accordingly instructed to revise the principal and interest amounts still due on your claim against the Lyon [130] County Bank and furnish us with a statement indicating the amount still due in principal and interest on your claim against the Lyon County Bank. You will arrive at the amount still due by following the procedure hereinafter indicated:

1. Indicate the amount of collections from the pledged assets representing income due on these pledged assets and collected from the assets after the date of closing of the Lyon County Bank. This amount will be applied by you toward payment of the interest due on your claim after the date of closing of the Lyon County Bank.
2. Apply toward payment of the principal amount due on your claim all collections made from the pledged assets representing the principal amount due on the pledged

assets and actually collected from these assets.

3. In the event the amount of collections made from the income earned upon the pledged assets after suspension is more than sufficient to pay all interest due on your claim against the Lyon County Bank, the amount of such excess will be applied by you toward payment of the principal amount due on your claim against the Lyon County Bank.

We believe that our position relative to your rights against the Lyon County Bank is sustained by the decision handed down by the Ninth Circuit Court of Appeals on December 7, 1936 in the case of *Douglass et al v. Thurston County*, copy enclosed. In that opinion the Circuit Court of Appeals held that a secured creditor of an insolvent national bank was not entitled to interest from any source on his claim after the date of closing of a national bank. In the opinion, the court discussed the case of *Washington-Alaska Bank v. Dexter Horton Nat'l Bank* (C. C. A. 9th), 263 Fed. 304, 306-307. The County Treasurer relied upon that decision as sustaining his right to receive interest upon his secured deposit after the date of closing of the national bank. The Circuit Court of Appeals held with respect to this question "That case is easily distinguishable from the one at bar. There the na-

tional bank was the plaintiff, seeking to foreclose a lien on collateral given by a state bank. The national bank laws dealing with the question of interest, after insolvency, on deposits held by a national bank, were therefore not involved in that suit.”

The Washington-Alaska Bank case above mentioned was decided in 1920. Your attorney should advise us whether or not there have been any changes in the Nevada laws relating to state banks or any court decisions construing the powers of state banks in Nevada which would now support the position of the attorney for the Lyon County Mortgage Corporation that no interest is properly payable on the bills payable obligation held by your trust after the date of closing of the Lyon County Bank. Please advise us fully relative to the opinion of your attorney in this question and also furnish the statement indicating the amount still due in principal and interest on your claim against the Lyon County Bank. [131]

Very truly yours,

KIT WILLIAMS

s/ Kit Williams

Executive Assistant Counsel  
Comptroller of the Currency.

Enclosures

DM

Clerk's Endorsement

Certified Copy

D.C. Form No. 30

United States of America,  
District of Nevada—ss:

I, O. E. Benham, Clerk of the United States District in and for the District of Nevada, do hereby certify that the annexed and foregoing is a true and full copy of the original Defendant's Exhibit No. A, filed March 18, 1938, in the case of Lyon County Bank Mortgage Corporation vs. W. J. Tobin, Receiver, Etc., No. 2721; now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Carson City this 21st day of March A. D. 1938.

[Seal]

O. E. BENHAM,

Clerk.

O. F. PRATT,

Deputy Clerk. [132]

[Endorsed]: No. 2721. U. S. Dist. Court, District of Nevada. Deft's Exhibit No. "A". Filed Mar. 18th, 1938. O. E. Benham, Clerk. By ....., Deputy. [133]

## DEFENDANT'S EXHIBIT "B"

\$60,500.00

Reno, Nevada, July 1, 1931

On demand after date, without grace, for value received Lyon County Bank a corporation, promises to pay to

The Reno National Bank

or order, at its banking office in Reno, Nevada the sum of Sixty thousand five hundred 00/100 Dollars in lawful money of the United States, with interest thereon at the rate of eight per cent per annum from date until paid. Interest payable on demand, also after judgment.

The endorsers, sureties, guarantors and assignors, severally waive presentation for payment, protest and notice of protest for non-payment of this note, and all defenses on the ground of any extension of time of its payment that may be given by the holder or holders, to them or either of them, or to the maker thereof. In the event of the non-payment of this said note at maturity, or its collection by suit, this corporation agrees to pay all expenses that may be incurred thereby, including a reasonable attorney's fee, and to that end binds itself, its successors and assigns forever. For the purpose of attachment or levy of execution, this note shall be payable wherever this corporation, or



any of its property may be situated, at the option of the holder.

[Seal] In witness whereof, the said corporation has caused this instrument to be executed and its corporate seal to be hereunto affixed by its proper officers first thereunto duly authorized.

**LYON COUNTY BANK**

By **J. I. WILSON**  
President

**GEO F. WILLIS**  
Secretary  
No. 5166.  
Form 188

(On Back)

	<b>Endorsement on Principal</b>		<b>Balance due on Principal</b>
Philatro & Jones	2-23-1932	\$1000.	\$59,500.
Offset	3- 3-1932	\$ 956.36	\$58,543.64
Sec. Corp coupons	3- 8-1932	\$ 180.00	\$58,363.64
Montelatici	5- 3-1932	\$ 106.65	\$58,256.99
do	6- 1-1932	\$ 106.65	\$58,150.34
Mtg. Sec. Coup	2- 6-1933	\$ 180.00	\$57,970.34
H. E. Carter	2-23-1933	\$3765.56	\$54,204.78
E. S. Wedertz	“ “	\$4919.00	\$49,285.78
L. L. Wedertz	2-27-1933	\$4080.25	\$45,205.53
Montelatici	5-10-33	20.00	45,185.53
Jones	7- 8-33	4481.79	40,703.74

**Endorsement on Interest**

12-16-1931	\$2420.00	to 12-31 1931	
6-30-1932	\$ 180.00	on acct Mtg. Sec. Cp	
6-30-1932	\$ 660.	“ “ Walker River Cp.	
7- 2-1932	\$ 660.	“ “ “	
7- 8-1932	\$ 106.65	“ “ Montelatici	
8- 8-1932	\$ 160.65	“ “ “	
8-13-1932	\$ 110.00	“ “ Simpson	
9- 8-1932	\$ 106.65	“ “ Montelatici	
10-14-1932	\$ 106.65	“ “ “	

*Lyon Co. Bank Mtg. Corp.*

2-23-1933	\$ 574.44	“ “	H. E. Carter
2-23-1933	\$ 866.25	“ “	E. S. Wedertz
2-27-1933	498.00	to 11-5-32	L. L. Wedertz
“	9.77	on acct.	do
			<b>Balance due on Principal</b>
Montelatici	4-20-1934	\$ 150.00	\$40,553.74
Philatro & Jones	“ “	\$ 50.00	\$40,503.74
Mtg. Sec. Cp.	11-30-34	1499.23	39,004.51
Montelatici	12-24-1934	\$5000.00	\$34,004.51
Jones	2-19-1935	\$4135.78	\$29,868.73
“	2-25-35	2.45	29,866.28
“	4-19-1935	\$3643.31	\$26,222.97
Yparraguirre	5-31-1935	\$3976.88	\$22,246.09
Walker Bonds	6-10-35	14306.16	7,939.93
Yparraguirre	6-17-35 (red)	40.79	7,980.72
Koenig	7- 2-1935	456.74	\$ 7,523.98
H. E. Carter	10-24-1935	\$2000.00	\$ 5,523.98
L. L. Wedertz	1- 4-36	3329.75	2,194.23
Jones Comp.	6-16-36	100.00	2,094.23
Carter Wed.	10-21-1936	\$2093.23	1.00
			<b>Balance</b>
			9056.36
Carter Wed.	10-21-1936	\$1357.84 on acct	7698.52
“	10-29-1937	\$ 873.05 “	6825.47

This is to certify that this is a true and correct copy of original note which I hold.

/s/ W. J. TOBIN

Receiver, The Reno National Bank

\$60,500.00

Reno, Nevada, July 1, 1931

On demand after date, without grace for value received Lyon County Bank a corporation, promises to pay to The Reno National Bank or order, at its banking office in Reno, Nevada, the sum of Sixty Thousand Five Hun-

dred 00/100 Dollars in lawful money of the United States, with interest thereon at the rate of eight per cent per annum from date until paid. Interest payable on demand, also after judgment.

The endorsers, sureties, guarantors and assignors, severally waive presentation for payment, protest and notice of protest for non-payment of this note, and all defenses on the ground of any extension of time of its payment that may be given by the holder or holders, to them or either of them, or to the maker thereof. In the event of the non-payment of this said note at maturity, or its collection by suit, this corporation agrees to pay all expenses that may be incurred thereby, including a reasonable attorney's fee, and to that end binds itself, its successors and assigns forever. For the purpose of attachment or levy of execution, this note shall be payable wherever this corporation, or any of its property may be situated, at the option of the holder.

In witness whereof, the said corporation has caused this instrument to be executed and its corporate seal to be hereunto affixed by its proper officers first thereunto duly authorized.

[Seal]

LYON COUNTY BANK

By /s/ J. I. WILSON

President

By s/s GEO. F. WILLIS

Secretary

No. 5166

Form 188

(On the back)

Corrected applications under instructions of the  
Comptroller of the Currency December 16, 1936.

	<u>Endorsement on Principal</u>	<u>Balance Due on Principal</u>
2-16-1932	\$ 956.36	\$59,543.64
2-23-32	\$1000.00	\$58,543.64
3- 8-32	\$ 180.00	\$58,363.64
5- 3-32	\$ 106.65	\$58,256.99
6- 1-32	\$ 106.65	\$58,150.34
2-23-33	\$3765.56	\$54,384.78
2-23-33	\$4919.00	\$49,465.78
2-27-33	\$4080.25	\$45,385.53
7- 8-33	\$1947.11	\$43,438.42
11-30-34	989.23	42,449.19
12-24-34	3403.61	39,045.58

	<u>Endorsement on Interest</u>	
12-16-31	\$2420.00	to 12-31 1931
6-30-32	\$ 180.00	on acct
“	\$ 660.	“
7- 2-32	\$ 660.	“
7- 8-32	\$ 106.65	“
8- 8-32	\$ 106.65	“
8-13-32	\$ 110.	“
9- 8-32	\$ 106.65	“
10-14-32	\$ 106.65	“
2-16-33	\$ 180.00	“
2-23-33	574.44	“
“	\$ 866.25	“
2-27-33	507.77	“
5-10-33	20.00	“
7- 8-33	2534.68	7-8-33
Balance forward		\$39,045.58

	<u>Endorsement on Principal</u>	<u>Balance Due on Principal</u>
2-19-35	\$2334.82	\$36,710.76
4-19-35	\$3490.92	\$33,219.84
5-31-35	\$1841.01	\$31,378.83
6-10-35	\$14236.42	\$17,142.41

7- 2-35	372.94	\$16,769.47
10-24-35	\$1582.70	\$15,186.77
1- 4-36	\$3090.16	\$12,096.61
10-21-36	\$1256.67	\$10,839.94
“	1523.00	9,316.94

Endorsement on Interest

4-20-34	\$ 150.00	on acct.
4-26-34	\$ 50.00	“
11-30-34	\$ 510.00	“
12-24-34	\$1596.39	“
2-19-35	\$1800.96	“
2-25-35	\$ 2.45	“
4-19-35	\$ 152.39	“
5-31-35	\$2095.08	to 5-31-35
6-10-35	\$ 69.74	to 6-10-35
7- 2-35	\$ 83.80	to 7- 2-35
10-24-35	\$ 417.30	to 10-24-35
1- 4-36	239.59	to 1- 4-36
1-16-36	100.00	on account
10-21-36	671.40	to 10-21-36

This is to certify that this is a true and correct copy of corrected applications under instructions of the Comptroller of the Currency Dec. 16, 1936.

/s/ W. J. TOBIN,  
Receiver, The Reno National Bank

Clerk's Endorsement

No. 2721. U. S. Dist. Court, District of Nevada.  
Deft's Exhibit No. "B". Filed Mar. 18th, 1938. O.  
E. Benham, Clerk. By ....., Deputy. [134]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT  
COURT, TO TRANSCRIPT OF RECORD.

United States of America,  
District of Nevada—ss.

I, O. E. Benham, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that I am custodian of the records, papers and files of the said United States District Court for the District of Nevada, including the records, papers and files in the case of Lyon County Bank Mortgage Corporation, a corporation, vs. W. J. Tobin, as Receiver of The Reno National Bank, of Reno, Nevada, a National Banking Association, said case being No. 2721 on the law docket of said Court.

I further certify that the attached transcript, consisting of 138 typewritten pages numbered from 1 to 138, inclusive, contains a full, true and correct transcript of the proceedings in said case and of all papers filed therein, together with the endorsements of filing thereon, as set forth in the praecipe filed in said case and made a part of the transcript attached hereto, as the same appears from the originals of record and on file in my office as such Clerk in Carson City, State and District aforesaid.

I further certify that the cost of preparing and certifying to said record, amounting to \$78.05, has been paid to me by Lyon County [135] Bank Mortgage Corporation, a corporation, the appellant in the above entitled cause.

And I further certify that the original citation, issued in said cause, is hereto attached.

Witness my hand and the seal of said United States District Court this 27th day of October, A. D. 1938.

[Seal]

O. E. BENHAM,  
Clerk, U. S. District Court,  
District of Nevada. [136]

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[Title of District Court and Cause.]

CITATION ON APPEAL.

The United States of America—ss:

The President of the United States of America.  
To W. J. Tobin, as Receiver of The Reno National Bank, of Reno, Nevada, a National Banking Association, Defendant:

You are hereby cited and admonished to be and appear before the United States Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, State of California, within thirty days from the date hereof, pursuant to an appeal filed in the Clerk's office of the United States District Court for the District of Nevada, wherein Lyon County Bank Mortgage Corporation, a corporation, the above named complainant, is appellant and you are the appellee, to show cause, if any there be, why the judgment in the said appeal mentioned should not be reversed and corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Frank H. Norcross,  
United States [137] District Judge for the District  
of Nevada, this 14th day of September, 1938.

[Seal]

FRANK H. NORCROSS,  
United States District Judge.

Receipt of a copy of the foregoing citation ad-  
mitted this 15th day of September, 1938.

N. J. BARRY,  
Attorney for Defendant.

[Endorsed]: Filed Sept. 16, 1938. [138]

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[Endorsed]: No. 9019. United States Circuit  
Court of Appeals for the Ninth Circuit. Lyon  
County Bank Mortgage Corporation, a corporation,  
Appellant, vs. W. J. Tobin, as Receiver of The Reno  
National Bank, of Reno, Nevada, a National Bank-  
ing Association, Appellee. Transcript of Record.  
Upon Appeal from the District Court of the United  
States for the District of Nevada.

Filed October 28, 1938.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.